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FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1105

ENTITLED THE "FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT"

JUNE 13, 1985

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FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT

THURSDAY, JUNE 13, 1985

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The subcommittee met at 9:35 a.m., in room SD-628, Dirksen Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senator Nickles.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. Good morning.

Today's hearings will focus on an issue that this subcommittee has been working on for the last 4 or 5 years, amending the Walsh-Healey Act. Specifically we will hear testimony on Senator Armstrong's bill, Senate bill 1105, to amend this act.

This amendment would allow private sector employers performing work for the Federal Government greater flexibility in setting their work schedules. Currently the Walsh-Healey Act's overtime requirements limit flexible scheduling to the detriment of both employers and employees. Senate bill 1105 would basically allow these employers and employees the same rights as those enjoyed by other employees and employers in the private sector as well as Federal employees.

The bill conforms the overtime provisions of the Walsh-Healey Act to those of the Fair Labor Standards Act. Should Senate bill 1105 be enacted, all employers would be required to pay overtime rates for work performed in excess of 40 hours per week.

When the Walsh-Healey Act was undergoing hearings in Congress in 1937, Frances Perkins, then Secretary of Labor, recognized the needless and wasteful overlap between the Walsh-Healey Act and the Fair Labor Standards Act. She said, and I quote:

> It does not seem desirable to have two sets of standards for the same industry * * * If a firm meets the standards established by the fair labor practice bill, it should then be regarded as eligible to contract with the Government.

This amendment has the rare distinction of benefiting all sides. In recent years there has been an increasing trend toward a 10-hour/4-day workweek. Flexible scheduling gives workers more leisure time to enjoy. Ample evidence exists that productivity increases, employee turnover and absenteeism is reduced, and overall morale in the workplace oftentimes increases.

On May 6, the Senate voted 86 to 5 in support of a resolution supporting the thrust of Senate bill 1105. With this demonstration of overwhelming support for amending the Walsh-Healey Act, I hope the Labor Committee will move as quickly as possible to approve this legislation.

I would like to note at this point that we have a letter from the administration endorsing the Walsh-Healey amendment.

It has been estimated by the Congressional Budget Office that this amendment could save nearly $2 billion in budget authority over 3 years. With the pressing need to find ways to reduce the budget, I believe Senate bill 1105 should be enacted as soon as possible.

I am very pleased to have a number of outstanding witnesses joining us today. Many have been before this committee before.

At this point I will insert in the record some documents referred to later in the text by me.

STATEMENT OF SUSAN R. MEISINGER
DEPUTY UNDER SECRETARY FOR
EMPLOYMENT STANDARDS
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND
HUMAN RESOURCES
U.S. SENATE

June 13, 1985

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit our statement to your Subcommittee today on S. 1105, to amend the Contract Work Hours and Safety Standards Act and the Walsh-Healey Act to permit employees, to whom such Acts apply, to work any combination of hours in a forty-hour workweek.

On behalf of the Department of Labor, I want to thank Senator Armstrong and his 25 co-sponsors for introducing S. 1105, and you, Mr. Chairman, for holding these hearings on this important legislation.

The Department of Labor strongly supports enactment of S. 1105. The purpose of this bill is to provide Federal contractors and their employees with the same flexibility for alternative workweek schedules, without an employer penalty for daily hours worked by employees in excess of eight, that employers have under the Fair Labor Standards Act (FLSA). The FLSA requires that overtime compensation be paid only for hours worked in excess of forty per week.

Specifically, this bill would amend existing law to eliminate the requirement that employers with Federal contracts pay overtime compensation after eight hours of work in a day. It would leave in the law the requirement that Federal contractors pay overtime for hours worked in excess of forty in a week.

We believe enactment of S. 1105 will give labor and management the same flexibility in implementing alternative work arrangements under Federal contracts as they presently have under the Fair Labor Standards Act on work not involving Federal contracts. This increased flexibility in work scheduling has the potential of benefiting both employers and employees, and could enhance the quality of work and family life, promote energy efficiency and increase productivity. This approach is consonant with the recommendation of the Grace Commission on overtime obligations under these Federal contract laws. The Department of Labor has stated its support for this bill in the past and is committed to enactment of this legislation.

Thank you for the opportunity to comment on this bill.

STATEMENT BY WILLIAM L. ARMSTRONG

FOR HEARING ON WALSH-HEALEY REFORM LEGISLATION

MR. ARMSTRONG, Mr. chairman, not often does Congress have the opportunity to enact legislation that will save taxpayers at least $1 billion in this decade and at the same time increase industry's productivity, improve employee morale, reduce labor costs, save energy, and modernize the workplace. Yet this is what Walsh-Healey reform legislation will accomplish if passed by Congress.

Under current law, federal agencies allow federal employees to work flexible work schedules. This legislation was enacted by Congress three years ago but Congress failed to allow the same benefits to federal contractors in the private sector. In essence, federal contractors in the private sector must pay their employees overtime pay for hours worked after an eight hour workday. This prevents employers and employees from benefiting from flexible work schedules such as four days a week, 10 hours a day workweek.

The legislation that is the subject of this hearing today, will create permanent statutory authority for alternative work schedules for federal contractors in the private sector. The Senate passed this legislation once before in 1980 but it was dropped in conference. It is time that we provide these federal contractors in the private sector the same benefits other government contractors and other workers in the private sector enjoy.

A year ago the Grace Commission reported that the current Walsh Healey Act drives up Federal contract costs by reducing competition and artifically inflating labor costs. The Commission estimated that this outdated law costs the federal government between $673 million and $1.3 billion annually, reports the Grace Commission. The Congressional Budget Office -- in a just released study — estimates that once Walsh-Healey reform is fully implemented that annual savings to the government will exceed $550 million.

The Commission specifically recommended that the current law be amended to eliminate the now required eight hour a day threshold from the overtime pay requirement, while retaining the 40 hour per week requirement.

The Commission stated that the eight hour per day overtime provision in this Act "is out of step with times" and serves only to increase costs to the government for work performed by these contractors. "Changes in the composition of the work force, particularly the influx of women and working mothers, have substantially altered the needs and characteristics of the average American worker. The patterns of working the 40 hour workweek have also shifted so that flexibility has replaced tradition as the basis of work schedules."

In addition to the advantages to the Federal Government, the Grace Commission listed a number of advantages that Walsh-Healey reform would have on the private economy:

> More Jobs. Experience at the corporate level with compressed workweeks has resulted in an increase in the total number of jobs. Increase in productivity, competitiveness, and the number of shifts employed translates into more jobs opportunities.
>
> Benefits to employees. The compressed workweek shows that employee morale and job satisifaction increases as a result of the increased flexibility of a compressed workweek. This is a result of reduced commuting costs and actual time spent computing, allowing for increased blocks of leisure time for family commitments, education opportunites, and personal fitness.
>
> Benefits to employers. Compressed workweeks provide benefits and more flexibility for employers including decreased overtime costs more efficient use of plant and office facilities, and increased employee productivity due to better employee morale.
>
> Benefits to the community at large. In addition to creating more jobs, the Commission's report stated that studies on the compressed workweek provide benefits to the community due to reduction in traffic congression, air pollution, energy consumption, and also better service to the public as a result of increased hours of operation.

Mr. Chairman, this legislation has one objective and one aim: to allow federal contractors the option of alternate work schedules. The benefits of flexitime, however, go far beyond less government interference in the private sector. There are distinct advantages for companies who have chosen to implement the alternative schedule that should be noted. In addition to the Grace Commission, numerous other studies have been conducted on the optional "compressed workweek". These studies, including those done by the Comptroller General, the Bureau of Labor Statistics (The Revised Workweek: Results of a Pilot Study of 16 firms), and the National Center for Energy Management and Power (Feaslibility Study of a System of Staggered Industry Hours, point out many of the same conclusions found by the Grace commission such as; 1) Greater Productivity — higher weekly output, improved use of plant equipment, and improved employee moral; 2)Improved Working Conditions — reduced employee working costs, increased job satisfaciton, and ease in recruitment; and 3)Energy conservation — reduction in fuel costs associated with commuting, and reduction in energy usage for heating and cooling plants or offices.

One possible advantage of particular interest to me deals with the problem of air pollution. We now have evidence as a result of a study released by the Denver Regional Council of Governments in cooperation with the Denver Federal Executive Board, examining the travel habits of some 7,000 federal employees on the compressed workweek schedule in the Denver area. The study concludes that the compressed workweek is one of the most effective transportation managment actions that Denver's federal agencies can take in addressing the concern of air pollution and traffic congestion.

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ten-hour workweek. Many labor contracts in my own State of Colorado include provisions for a flexible workweek -- and are merely waiting for Congress to update the archaic law.

As you are aware, Mr. chairman, S. 1105 was introduced with 26 Senate co-sponsors. Just recently, you introduced a Sense of the Senate Resolution to the Senate Budget Resolution on the need for Walsh-Healey reform. This Sense of the Senate Resolution passed by an overwhelming vote of 86-5. Even more recently, Senator Gramm successfully included Walsh-Healey reform in the Defense Authorization bill. On the House side, Congressman Tom Kindness has introduced this exact legislation, and the House Budget Resolution assumes savings from Walsh-Healey reform.

Mr. chairman, I have introduced this legislation in the last three Congresses, yet never before have I seen such interest and bipartisan support for this legislation. We must continue this momentum by successfully passing this bill in the Senate and following it through conference with the House. I compliment you and your staff for the time and work you have already devoted to this issue and I look forward to working [illegible] with you on this issue until it's passed and signed into law.

It has been estimated that neither providing free transit service at peak periods for everyone in the area, nor an extensive and complicated program of carpool matching would even equal the impact on air pollution that resulted from only 7,000 employees on a compressed workweek. Imagine what could result if all employees if all employees of federal contractors in the area, which easily number twice that of the federal employees in the study, were allowed to shift to a four-day workweek.

A change in the Walsh-Healey Act would not in any way affect the Fair Labor Standards Act, which governs all workers and provides that overtime premiums be paid whenever employees work more that 40 hours a week. The proposal would not impact the collective bargaining process, nor would it conflict with any of the federal labor laws. Nothing in this amendment shall be construed to cover employees specified in the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. Finally, the bill does not mandate a compressed workweek, only restores to American business and workers serving the federal government the basic freedom of choice.

Mr. Chairman, in the past, we have heard many unions and workers testify that government employees are eager to see the Federal Employee Flexible Work Schedules Act become permanent. The same is true for the employee in the private sector working on a federal contract. Many private sector collective bargaining agreements across the nation encompass the four-day, tne-khour workweek. Many labor contracts in my own State of Colorado include provisions for a compressed workweek — and are merely waiting for Congress to update the archaic law.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

June 25, 1985

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for our views on S. 1105, a bill entitled the "Federal Contractor Employees Flextime Act", which would amend the Contract Work Hours and Safety Standards Act and the Walsh-Healey Public Contract Act to permit employees, to whom the Acts apply, to work any combination of hours in a 40-hour workweek.

The Department of Labor strongly supports enactment of S. 1105.

The purpose of this bill is to provide Federal contractors and their employees with the same flexibility for alternative workweek schedules, without an employer penalty for daily hours worked by employees in excess of eight, that employers have under the Fair Labor Standards Act (FLSA). The FLSA requires that overtime compensation be paid only for hours worked in excess of forty per week.

Specifically, this bill would amend the existing law to eliminate the requirement that employers with Federal contracts pay overtime compensation after eight hours of work in a day. It would leave in the law the requirement that Federal contractors pay overtime for hours worked in excess of forty in a week.

We believe enactment of S. 1105 will give labor and management the same flexibility in implementing alternative work arrangements under Federal contracts as they presently have under the FLSA on work not involving Federal contracts. This increased flexibility in work scheduling has the potential of benefiting both employers and employees, and could enhance the quality of work and family life, promote energy efficiency, and increase productivity. This approach is consonant with the recommendation of the Grace Commission on overtime obligations under these Federal contract laws. The Department of Labor has stated its support for this bill in the past and is committed to enactment of this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress and that enactment of S. 1105 would be in accord with the program of the President.

Very truly yours,

WILLIAM E. BROCK

WEB:sjc

Senator Nickles. Our first panelist is Jim Malone, president and chief executive officer of Facet Enterprises from Tulsa, OK.

I would appreciate all of our witnesses making abbreviated comments. We do have the Prime Minister of India who will be addressing the joint session of Congress at 11 a.m. If I can make that, I'd like to.

Mr. Malone, we appreciate your appearance before this committee. Thank you.

STATEMENT OF JAMES R. MALONE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FACET ENTERPRISES, INC., TULSA, OK

Mr. Malone. Thank you, Mr. Chairman, and your colleagues on the U.S. Senate Labor Subcommittee.

I am honored that you have allowed me to appear before you today to address the issues proposed by Senate bill 1105, the Federal Contractor Employees Flextime Act.

It is not my purpose this morning to deal with the philosophy backing this proposal, but with the reality our company has experienced by using flextime or, in our particular case, a 4-day/40-hour workweek.

I believe that one specific experience I will relate to you will illustrate the necessity of passing this legislation, not only to provide companies under Government contract with the flexibility they and their employees need to set their own hours of work, but to protect companies like Facet who have had to pay a penalty due to the precedent set by the Walsh-Healey Act when a Government contract was not even at issue.

When flextime began to grow in popularity, we asked our various human resource departments at our then 10 plants in 9 States to take a look at this new and rather exciting concept. After a certain amount of factfinding, which included discussions with employees or the union leadership, depending upon the plant, we received field reports. The reports ranged all over the lot. Some plants thought the idea had great merit, but because of section 1, item c of the Walsh-Healey Act, they could not even think of implementing flextime due to the fact they serviced Government contracts. Others responded that due to local custom, the configuration of the workflow and other reasons, flextime would be impractical. Others enthusiastically endorsed the concept.

One plant which endorsed that concept was our industrial filter manufacturing facility on Apache Streeet in North Tulsa, whose employees are members of the United Auto Workers Union. We first sat down with the union leadership and raised the idea. They were very interested. After an 8-week trial period, the 4-day, 40-hour-a-week plan was put to a vote by the union and was overwhelmingly accepted by the membership. As a result, flextime became a reality. The reception was enthusiastic. And let me give you several reasons for that enthusiasm.

Oklahoma, as Senator Nickles knows, has more shoreline than the State of Minnesota. And a lot of that shoreline is in northeastern Oklahoma. As a result, nearly every work force in Tulsa has a lot of fishermen, and women for that matter, on staff. Flextime, or having every Friday off, gave our people an additional day for their weekend at the lake, or whatever. Other employees reported that it gave them a chance to get their lawn mowing and yard work out of the way on Friday so that the weekend could truly be a leisure time for them. I realize that doing yard work on a Friday may not seem like a compelling reason to pass this or any particular piece of legislation, but I warned you that this testimony would be practical rather than philosophical.

On a more serious level, many of our female employees—and we are hiring more and more females in manufacturing positions every day—reported to us that having Friday off was, and I do not intend to be sacrilegious, a godsend. They said, quite frankly, that having Friday off allowed them to do the various—and I am careful to put this in quotes—"wifely chores" such as shopping, laundry, house cleaning, and so forth that previously had to be done either at night or on weekends. It made joining the work force a more attractive and practical option for them.

Then we got hammered. After several years of flextime, we found that we had to terminate one of our employees. I should point out that this termination was not related in any way to flextime. The person terminated protested his firing. Our action was in fact upheld. Then the person filed a suit for back wages on the basis of overtime. Even though we were not servicing any Government contract at that time on Apache Street, the court found not only in this person's favor, but ordered Facet to pay back wages for overtime to all of our employees and to immediately terminate flextime. The dollar cost of the settlement was nothing compared to the blow this was to morale at the Apache Street plant. Not only did it deprive our people from a day off, it took money out of their pockets. As Senator Nickles knows, Tulsa drags its work force from many surrounding communities—Collinsville, Skiatook, Sand Springs, and so on. By eliminating 1 day of commuting, our people were saving time, money, fuel, and effort. By the court's action, they were making the same amount of money per week, but having the additional expense of a fifth day commute.

Now, before I deal with my next point, I should point out that I am an adopted Oklahoman. I am originally from Indiana, but am now proud to call Oklahoma my home. And one reason that I am is that people from Oklahoma have a strong work ethic. A good day's labor for a good day's pay. I say that to put the following in context and perspective.

After the court ordered Facet to pay all our workers back pay for overtime, we had several employees try to turn their checks back into the company or simply refuse to accept them altogether, or quash them. Their explanation? I worked a good week and you paid me for a good week's worth of work. I do not deserve this.

Now, I am a part of management, and I have been painting a positive picture from a labor point of view. Let me speak for a moment to the positives from a management viewpoint. With flextime, our employees requested fewer personal days. They would tend to schedule doctor's and dentist's appointments for themselves and their children on Fridays. This was an obvious benefit to our company in terms of productivity. For example, our Salt Lake City automotive oil and air filter manufacturing plant currently works on a 4-day, 40-hour week. That plant consistently sets new production records on nearly a weekly basis.

While I have talked about practicality, let me for only a moment talk about philosophy. We are seeing a trend toward participative management. We currently have four plants on an all-salaried basis. One purpose of this is to break away from the adversarial labor/management relationship which has dominated for the past several decades. Rather, we are trying to build a sense of team. For, indeed—labor and management—we are all in this together or fail together.

The provisions we find in Walsh-Healey constrain this movement. And, I quickly point out, even in the traditional labor/management contractual relationship, we—in the specific case of our plant on Apache Street in Tulsa, OK—are prohibited from entering into a flextime arrangement even with the total agreement of the union.

I am asking you to take the handcuffs off—the handcuffs off both business and labor. Let us who are labor and management sit down and reach agreements that satisfy both parties. That is what we would like to do right now at our Apache Street plant, among other facilities. And let us introduce flextime where appropriate and where it makes good business sense at facilities which have Government contracts.

Please, in the name of productivity, labor and management relations and in employee relations, take the handcuffs off. Let us have flextime.

I would be happy to respond to any questions you might have, Senator.

Senator NICKLES. Thank you very much, Mr. Malone.

How many plants do you have?

Mr. MALONE. We have 16 plants today in the United States and 4 in Europe.

Senator NICKLES. Some of those plants are union and some are nonunion?

Mr. MALONE. That is correct.

Senator NICKLES. And some of them are on an hourly basis and some of them are on a total salary basis?

Mr. MALONE. Yes, Senator. Four of our plants in the United States are totally salaried operations, no timeclocks, and I will say we have no different fringe benefits from one category to the other, whether blue-collar or white-collar.

Senator NICKLES. Still a production-type plant?

Mr. MALONE. Yes.

Senator NICKLES. One has what we would call traditional blue-collar employees based on salary rather than an hourly rate?

Mr. MALONE. Yes.

Senator NICKLES. How is that working?

Mr. MALONE. We are very pleased with those plants. One of those operations—we have two sister plants, one of which is an organized facility in Missouri and the other, its sister plant in Salt Lake City, UT, does exactly the same thing with pretty much the same equipment and is on flextime with an all-salaried work force.

Senator NICKLES. One of the reasons for the all-salaried work force is so you would have maximum flexibility?

Mr. MALONE. That is one of the reasons. But the other reason primarily is to make it easier to basically eliminate artificial barriers that have been put up. I think one of the problems of American industry today is they have artificial barriers separating classes of people that are not necessarily good.

Senator NICKLES. An interesting point. I congratulate you.

Let me ask you a question specifically about your Tulsa plant. The members of the UAW in Tulsa voted overwhelmingly to go to four 10's?

Mr. MALONE. That is correct.

Senator NICKLES. And then it was a DOL ruling that mandated overtime backpay?

Mr. MALONE. Yes, sir.

Senator NICKLES. And that now prohibits you from working the four 10's?

Mr. MALONE. That is correct.

Senator NICKLES. In other words, your plant right now in north Tulsa, even with the fact that the employees and management all agree that you want to have the four 10-hour workdays, because of the DOL ruling and the Walsh-Healey requirements, is operating a 5-day workweek?

Mr. MALONE. That is correct.

Senator NICKLES. The employees are denied the very thing that they requested—their preference to do?

Mr. MALONE. That is right.

In a further example of that, Senator, if I might just take a moment, in a lot of manufacturing facilities it is impossible to do your maintenance work while the plant is running on some key factors. And maintenance personnel traditionally have resigned themselves, if you are going to become a pipefitter or a millwright or electrician, you are going to work weekends.

One of the additional benefits which I think is often overlooked is you have Fridays available even though it is on overtime to have your skilled maintenance people do a lot of things and have some family life they would not be able to have otherwise.

Senator NICKLES. That is a good point from the scheduling and management side of it. But I am more troubled that if management and labor get together and say we want to do this work and the pay will be the same, and we want to do it in 4 days instead of doing it in 5 days, with the Federal Government coming in and saying no, you cannot do that unless you pay a 10-percent premium.

Mr. MALONE. I am equally troubled.

Senator NICKLES. Hopefully we will be successful in reversing that current position so the employees in Oklahoma or in any of the other plants you have throughout the country or in the United States will have on opportunity to have the 3-day weekend if they so desire.

Mr. MALONE. Thank you for giving me the opportunity to tell our story.

Senator NICKLES. Thank you very much. It is a good story. I think it points out the inadequacy of the present law.

Our next panelist is Carl J. Oles, vice president of personnel, Rockwell International Corp. from Pittsburgh, representing the Aerospace Industries Association of America, Inc. Please proceed.

STATEMENT OF CARL, J. OLES, VICE PRESIDENT FOR PERSONNEL, ROCKWELL INTERNATIONAL CORP., PITTSBURGH, PA, ON BEHALF OF THE AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.

Mr. OLES. Senator, I would like to summarize my statement and I request that the whole text be printed in the record.

Senator NICKLES. The whole text will be printed in the record, not only for your statement but for all our panelists, and I appreciate your summarizing your statement very much.

Mr. OLES. Mr. Chairman, I am Carl J. Oles, vice president of personnel for Rockwell International Corp. Today I am appearing on behalf of the Aerospace Industries Association of America, Inc. [AIA], the trade association representing the Nation's major manufacturers of aircraft, helicopters, aircraft engines, missiles, spacecraft, and related components.

AIA appreciates the opportunity to appear here today to offer our strong support for the legislation introduced by Senator Armstrong, Senate bill 1105. We heartily endorse Senator Armstrong's statement that enactment of this legislation would save the taxpayers as much as $1 billion in this decade, perhaps several billions, while increasing industry's productivity, improving employee morale, reducing labor costs, saving energy and modernizing the workplace.

Total aerospace industry employment for 1985 will reach approximately 1,299,000 workers, with production workers representing almost 45 percent of the total employment in the industry. I might add, as an aside, that our own company, Rockwell International, employs 3,852 employees in the State of Oklahoma alone.

Currently the Walsh-Healey Act makes it prohibitively expensive for Government contractors and their employees to use compressed, flexible, or other alternative workweek schedules as the act requires Federal contractors to pay overtime rates to employees for all hours worked in excess of 8 hours per day. However, private sector employers not engaged in Government contracts and Federal agencies are not similarly penalized.

By way of background, the Fair Labor Standards Act, which governs private sector employees, requires overtime pay for all hours in excess of 40 hours per week. Additionally, Government contractors are subject to the Walsh-Healey Act which provides that Federal contractors must also pay time and one-half for all hours worked in excess of 8 hours per day. Therefore, while private employers are turning to the use of compressed and flexible work schedules in greater numbers each year in the private sector, these innovative work schedules prove costly and inefficient to Federal contractors.

As report by the Bureau of the Census in 1980, 12 percent of all full-time, nonfarm wage, and salary workers were on flextime or compressed schedules which permitted them to vary the time their workdays began and ended. The Work in America Institute has predicted that compressed and flexible work schedules will be used by at least 25 percent of the work force by the end of the decade.

Such schedules have proven to be more responsive to the desires of employees, and have provided employees with increased leisure time and reducing commuting costs. Resulting employee satisfaction has manifested itself in lower absenteeism and tardiness, reduced turnover and increased productivity.

Additional benefits accruing to employers include more effective use of equipment, reduced energy requirements, a higher weekly output due to reduced startup and shutdown time, and an enhanced ability to meet the needs of a cyclical economy. As only Federal contractors and their employees are denied use of compressed workweeks, companies currently utilizing compressed workweeks have indicated that they cannot consider bidding on Federal contracts because of the daily overtime requirement.

In 1983, the Grace Commission reported that the Walsh-Healey Act has driven up Federal contract costs by reducing competition and artificially inflating labor costs to the tune of between $673 million and $1.3 billion annually. It was a specific recommendation of the Grace Commission that the current law be amended to eliminate the required 8-hour-a-day threshold from the overtime pay requirement, while retaining the 40-hour-per-week requirement. A recent Congressional Budget Office study estimated the annual savings to the Government at $550 million.

Senate bill 1105 would not affect the Federal minimum wage or the 40-hour overtime provisions of the Fair Labor Standards Act, impact on the collective bargaining process, would not conflict with other Federal labor statutes, nor mandate 4-day work weeks. Instead, it would extend to Federal contractors an option currently enjoyed by every other segment of society.

We appreciate the opportunity to express our views before your subcommittee and will now try to answer any questions you might have.

[The prepared statement of Mr. Oles follows:]

STATEMENT OF
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
CONCERNING
S. 1105, THE FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR & HUMAN RESOURCES
UNITED STATES SENATE

June 13, 1985

Mr. Chairman and Members of the Subcommittee:

I am Carl John Oles, Vice President of Personnel for Rockwell International Corporation. Today I am appearing on behalf of the Aerospace Industries Association of America, Inc. (AIA), the trade association representing the nation's major manufacturers of commercial, military and business aircraft, helicopters, aircraft engines, missiles, spacecraft and related components and equipment. AIA appreciates the opportunity to appear here today to offer our strong support for the legislation introduced by Senator Armstrong, S. 1105, the Federal Contractor Employees Flextime Act. We heartily endorse Senator Armstrong's statement that enactment of this legislation would save the taxpayers as much as $1 billion in this decade while increasing industry's productivity, improving employee morale, reducing labor costs, saving energy, and modernizing the workplace.

The latest employment survey by AIA indicates that total aerospace industry employment for 1985 will reach approximately 1,299,000 workers (at the end of 1984 industry employment reached 1,252,000), with production workers representing almost 45 percent of total employment in the industry. Currently, the Walsh-Healey Public Contracts Act makes it prohibitively expensive for government contractors and their employees to use compressed, flexible or other alternative workweek schedules as the Act requires federal contractors performing on contracts over $10,000 to pay overtime rates to employees for all hours worked in excess of eight hours per day. However, private sector employers not engaged in government contracts and federal agencies are not similarly penalized.

By way of background, the Fair Labor Standards Act (FLSA), which governs minimum wage and overtime requirements for private sector employees, requires overtime pay for all hours in excess of forty hours per week. Additionally, government contractors are subject to the Walsh-Healey Act which provides that federal contractors must also pay time-and-one-half overtime for all hours worked in excess of eight hours per day on federal contracts over $10,000. Therefore, while private employers are turning to the use of compressed and flexible work schedules in greater numbers each year, these innovative work schedules prove costly and inefficient to federal contractors.

As reported by the Bureau of the Census in 1980, 12 percent of all full-time, non-farm wage and salary workers were on flextime or compressed schedules which permitted them to vary the time their workdays began and ended. The increasing use of compressed workweeks in the private and public sectors is a direct consequence of the demonstrated benefits which accrue to both employers and employees. Furthermore, the Work in America Institute has predicted that compressed and flexible work schedules will be used by at least 25 percent of the workforce by the end of the decade.

Such schedules have been proven to be more responsive to the desires of employees as the flexibility inherent in these schedules has provided employees with, for example, increased leisure time and reduced commuting costs. Resulting employee satisfaction has manifested itself in lower absenteeism and tardiness, reduced turnover and increased productivity.

Additional benefits accruing to employers include more effective use of equipment, reduced energy requirements, a higher weekly output due to reduced start-up and shutdown time, and an enhanced ability to meet the needs of a cyclical economy. As only federal contractors and their employees are denied use of compressed workweeks, companies currently utilizing compressed workweeks have indicated that they cannot consider bidding on federal contracts because of the daily overtime requirement.

In 1983, the Grace Commission reported that the Walsh-Healey Act has driven up federal contract costs by reducing competition and artificially inflating labor costs to the tune of between $673 million and $1.3 billion annually. It was a specific recommendation of the Grace Commission that the current law be amended to eliminate the required eight hour a day threshold from the overtime pay requirement, while retaining the 40 hour per week requirement. A recent Congressional Budget Office study estimated the annual savings to the government at $550 million.

At a time when Congress' attention is focused on reduction of the deficit, the benefits resulting from reduced federal expenditures for procurement should be particularly welcome. We believe that Congress should enact legislation to eliminate the disparate treatment of government contractors and permit them to take advantage of the demonstrated cost-savings and other benefits to be derived from compressed workweeks. S. 1105 would not affect the federal minimum wage or the forty-hour overtime provisions of the Fair Labor Standards Act, impact on the collective bargaining process, conflict with other federal labor statutes, nor mandate four-day workweeks. Instead it would extend to federal contractors an option currently enjoyed by every other segment of society.

We appreciate the opportunity to express our views before your Subcommittee and will now try to answer any questions you might have.

Senator **Nickles**. Thank you very much, Mr. Oles.

How many employees do you have in Oklahoma?

Mr. **Oles**. 3,852, Senator.

Senator **Nickles**. It is impressive. Rockwell is a major defense contractor.

You also do a lot of nondefense work as well?

Mr. **Oles**. Yes; slightly more than 50 percent of our work is under Government contract. The rest is in the private industry sector.

Senator **Nickles**. Are the non-Government contractors using flex schedules now?

Mr. **Oles**. Yes; and, in fact, even in one of our Government plants, namely in Anaheim, CA, we have salaried engineers who are professional engineers who are exempt from the provisions of the Fair Labor Standards Act because they are professional people. And we have found in that specific case that of the 4,000 engineers that we have, that we have offered these flextime arrangements to, 1,000 have availed themselves of that and, therefore, come in earlier or later so that they do get off the freeways in traffic and all this, and can devote more time, both to their work and to their leisure. They are very, very pleased with it. So that is an example right there where we cannot do it at the hourly level because of the restrictions in the law at the present time. But we have it at the exempt salaried level.

And in answer to your question, yes, we have other plants in the private industry side where we do use compressed work weeks and flextime.

Senator **Nickles**. Are most of your plants union or nonunion?

Mr. **Oles**. Of the 120,000 employees that we have in Rockwell International at the present time, approximately 47,000 are represented by a labor union.

Senator **Nickles**. When you set up a different schedule—I keep saying four 10's, and I am assuming most people realize it would not have to be four 10's, but something other than strictly five 8's—are the employees consulted? Do they have a vote on whether or not this is set up in that manner?

Mr. **Oles**. If it is a represented plant, and flextime is permitted, then after reaching agreement with the union, the option is left with the employee. No one is forced to do it. It always is an option where it is voluntary on the part of the employee. But it is agreed to with the union representing the employees first, where they are represented.

If they are not represented, then we make a flextime policy announcement to all people, that this is what the policy is, and they have a chance to volunteer to use it themselves. It is subject to working out directly with their supervisors. But it is always on a voluntary basis. It is never mandated

Senator **Nickles**. How has it been received with the employees?

Mr. **Oles**. Very, very well. It is a growing phenomenon, rather than something we have had a bad experience with, therefore, and the people say we do not want this, and we want to eliminate the policy. It is a growing thing where it is permitted because of its popularity.

Senator NICKLES. Mr. Malone mentioned that it was very popular with the employees, but also that it had some management savings vis-a-vis maintenance in the fifth day, or other opportunities.

Do you think if you could implement this you could have some savings, and possibly be able to reduce costs to the Department of Defense, or whoever else you might be selling to?

Mr. OLES. Yes. In our major plants, in Columbus, OH, we have what we call five-axis machines, which are very expensive, and we would like to employ those machines as much during the week as we can, and we would like to go to compressed schedules of four 10's, or three 12's, and four 12's in alternate weeks, and that type of thing, so the employees would be utilizing the machinery to a greater extent.

So it is advantageous from the standpoint of greater utilization of the machinery which we have made a major investment in.

We found that there are energy savings, and other savings as a result of doing this. There is also a sidelight that I would like to express.

One major company in southern California wanted to work four 10's in a week, and have the fifth and sixth days available to the local universities, where the students could come in and utilize those laboratory facilities, just like the engineers were doing in this hopeful 4-day week. But they ran into so many problems because of these overtime requirements being on Government work they decided to abandon it, and were not able to go through with that.

Senator NICKLES. It is an interesting comment. If this change was made, do you have any estimate of how many plants Rockwell might try and take advantage in, or would move that way?

Mr. OLES. It would affect the rest of our Government work which, as I say, is a little over one-half, so just eyeballing the thing, it would affect in the neighborhood of 55,000 to 70,000 employees in Rockwell International alone, who would possibly have this opportunity opened to them.

Senator NICKLES. For example, like the Tulsa plant, they might have that opportunity, which right now is closed to them?

Mr. OLES. Yes.

Senator NICKLES. Mr. Oles, I appreciate your comments before the committee, and also summarizing your statement. Thank you very much.

Mr. OLES. Thank you, sir.

Senator NICKLES. Our next panel represents the Printing Industries of America, Inc. They are Ben Cooper, senior vice president for government affairs; Mrs. Inger Trudelle, controller of W.J. Trudelle Co., Boston, MA; and Charles Johnson, who is head pressman at United Lithographic Services, Inc., in Falls Church, VA.

STATEMENTS OF BENJAMIN Y. COOPER, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, ARLINGTON, VA; MRS. INGER TRUDELLE, CONTROLLER, W.J. TRUDELLE CO., BOSTON, MA; AND CHARLES JOHNSON, HEAD PRESSMAN, UNITED LITHOGRAPHIC SERVICES, INC., FALLS CHURCH, VA

Mr. **Cooper**. Senator Nickles, we appreciate the chance to come before you to represent the views of the Printing Industries of America on Senate bill 1105.

Our interest in Walsh-Healey is obvious. We represent an industry that procures about $600 million in contracts through the legislative branch, the GPO. More than 7,000 companies compete for these contracts. Ninety-three percent of them are small businesses. Most of these companies are able to take advantage of Government work only because of their mobility and flexibility.

We are finding increasing number of them that are literally impaled on the Walsh-Healey provisions because they are operating under the laws of their States which now allow flexible workweeks. On the occasions that they take Government contracts they run headlong into Walsh-Healey, and either have to change their work hours, or give up the Government work, which is most commonly the option they choose.

As you indicated, with me today are Mrs. Inger Trudelle of the W.J. Trudelle Co. in Boston, MA; and Mr. Charles Johnson with United Lithographic Services of Falls Church, VA. Their examples of problems with the Walsh-Healey Act are indicative of many companies in our industry. They represent some of the finest companies we have in terms of working with their employees, with the best interests of both the company and the employees.

I would like now to introduce Mrs. Trudelle and Mr. Johnson, and they will make their statements brief, and we appreciate the full statements being put in the record.

Senator **Nickles**. Thank you.

Mrs. **Trudelle**. Mr. Chairman, members of the subcommittee, my name is Inger Trudelle. I am the controller and coowner of the W.J. Trudelle Co. in Boston, MA.

I am going to summarize, so you can get to the Ghandi meeting, hopefully.

My husband and I have been running this company since 1979. It is a small company. It began with six full-time employees. We have 28 now. We have both compressed work weeks and flextime. Of all the fringe benefits that we do offer, the flexibility in working hours is probably the most important to all of our employees.

This, of course, runs headlong into Walsh-Healey, because we cannot bid on Government contracts. One of the things that the Government encourages small businesses to do is to grow with the entreprenuerial spirit, and so forth.

We would be able to grow 10 to 20 percent more if we were able to bid on Government contracts. Because we do not want to take away the benefits we have given to our employees, we cannot bid on them. So the Government is losing, in terms of the number of contractors available for them to select from, and we are losing the ability to grow because what we manufactire ties directly to paperwork, and the types of data that come out of all the different Government agencies.

So we really lose out, and I am kind of incensed that the Government says grow on one side, and says absolutely not, unless you do this on the other side.

For a small, independent company this kind of Government involvement is really difficut to deal with, and it is unfair, and we are penalized, and our employees, you know, they benefit if we grow, and we cannot grow as rapidly as we would like to because we are cut off from bidding on Government contracts.

I would be happy to answer any questions.

Senator Nickles. Thank you.

Mr. Johnson.

Mr. Johnson. I am Charles Johnson. I am head pressman at United Lithographic Services in Falls Church, VA. I have been employed at United for 11 years, and my entire time has been on a compressed work week. When I began my career I was working four 10-hour days, and I found compressed scheduling to be far more preferable than my previous job of five 8-hour days. It gave me an extra day off each week, more time to spend with my family, saved a great deal of commuting time, less wear and tear on my car, and all the coworkers there are very pleased with the compressed schedule.

In 1976 United went an additional step, and implemented a 3-day work week, with 12-hour days. Combined with four 10's, this schedule filled out the remainder of the week, and we were able to keep the plant running for 7 days a week. The 3-day shift quickly became the most popular shift at the plant, and I was able to switch from working the four 10-hour days to a three 12-hour-day week.

I have also been pleased with the compressed schedules, and I count it as one of the best fringe benefits there. When the new 3-day shift was implemented, all the employees got together and decided how we wanted to structure the hours, and we agreed to run the shifts from 4 to 4. This way we could all avoid the worst rush hour traffic.

Those of us at United that work the three 12-hour days all get paid overtime for any work over 36 hours. Those on the 4-day, 10-hour schedule, get paid overtime for all work beyond 40 hours per week.

We were working on a number of Government contracts, when in 1979 the Department of Labor discovered that the company was in violation of the Walsh-Healey Act. Once the violation was discovered, United had to calculate the back wages, starting from 1977, for all employees, and the result was a back payment of over $50,000 divided amongst all the blue collar workers.

While we certainly did not offer to give the money back, it was understood by everyone that the windfall was hard to justify. The thing we were most concerned about, however, was preserving our compressed schedules. Because United was at a point that it could not immediately phase out all of its Government contracts, we were all frightened that perhaps we would be forced to go to five 8-hour days.

The Department of Labor suggested that we adjust the pay by lowering our hourly wages, and paying overtime for the additional 4 hours per day. This was the solution that was finally taken. While the solution at first may sound practical, but it was cumbersome, inconvenient, and it still remains so.

The biggest problem it presents employees working 12 hours a day is that if we are at a slow period, employees like to leave, go home, and we find that we are unjustly penalized, because any time after our first 8 hours is overtime. If we leave, then we just do not take home an appropriate level of pay.

It dampens the enthusiasm for getting Government printing contracts, and we have since phased out most Government contracts. The Federal Government thus has lost out on the services of one of the best publication printers in northern Virginia, and as a taxpayer as well as an employee, I think that this situation is ridiculous.

My fellow employees and I at United feel we are both being penalized because our company sought to provide us with a better work environment. This situation is simply unfair, and I hope the Walsh-Healey Act can be changed for the better.

I am grateful for this opportunity to appear before you, and hope that you can do something to correct the problems in the Walsh-Healey Act, and I will be happy to answer any questions you may have at this time, Senator.

[The prepared statements of Mr. Cooper, Mrs. Trudelle, and Mr. Johnson, representing the Printing Industries of America follow:]

PRINTING INDUSTRIES OF AMERICA, INC.

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Statements of

Mrs. Inger Trudelle
Controller
W. J. Trudelle Company
Boston, Massachusetts

and

Charles Johnson
Head Pressman
United Lithographic
Services, Inc.
Falls Church, VA

accompanied by

Benjamin Y. Cooper
Senior Vice President
Government Affairs
Printing Industries of America

Representing

The Printing Industries of America, Inc.
and
The National Association of Printers and Lithographers

Before the
Senate Subcommittee on Labor
June 13, 1985

Mr. Chairman, Members of the Subcommittee, my name is Benjamin Y. Cooper. I am senior vice president of Government Affairs for the Printing Industries of America (PIA). Appearing with me today are Mrs. Inger Trudelle, Controller, The W.J. Trudelle Co., Boston, Massachusetts, and Mr. Charles Johnson, Head Pressman, United Lithographic Services, Falls Church, Virginia. We appreciate the opportunity to present testimony in support of S.1105, the Federal Contractors Employees Flextime Act. PIA is the nation's largest graphic arts trade association with more than 12,000 U.S. members. In addition, our testimony is presented on behalf of the National Association of Printers and Lithographers, which represents more than 3,000 companies in the industry.

PIA has had a longstanding interest in removing the present barriers to the use of flexible and compressed work schedules that are found in the Walsh-Healey Public Contracts Act and the Contract Work Hours and Safety Standards Act. Each year, more than 7,000 printers throughout the country compete for federal printing contracts through the Government Printing Office's Regional Procurement Program. More than 93 percent of those companies awarded contracts are small businesses, making the GPO procurement program the finest small business procurement program in the federal government.

Unfortunately, the entire industry is not able to share in this lucrative market for government printing. Because of the overtime requirements in federal contracting law, many companies which have sought innovative ways to address the changing needs of their workforces, particularly through the use of alternative work schedules, find themselves effectively precluded from bidding on federal work. The unfortunate aspect of this is that these companies are often the most efficient, the most productive and the most responsive to the needs of their employees. They are just the kind of contractors that the federal procurement process needs more of yet they are the only contractors that find participation in that process completely unworkable.

The witnesses appearing on behalf of PIA today represent two such companies. Their companies are the finest we have to offer in terms of innovative management techniques that address the changing needs of today's workforce. I hope their testimony will shed some necessary light on the impact the present Walsh-Healey Act has on the federal procurement process and why it is so important that we obtain passage of S. 1105 during this session of Congress.

Statement of: Mrs. Inger Trudelle
Controller
W.J. Trudelle Co.
Boston, Mass.
June 13, 1985

Mr. Chairman and members of the Subcommittee, my name is Inger Trudelle. I am Controller and co-owner of the W. J. Trudelle Company in Boston, Massachusetts.

My husband John Trudelle and I purchased W. J. Trudelle Company, Inc. in 1979. We returned from the West coast to take over a small, struggling company with eight full-time employees. Today we have 28 full-time employees and are a profitable concern. We have committed ourselves not only to making the company grow, but also to having a positive impact on our employees, our community and within our industry.

I am an immigrant who arrived here from Norway four years after World War II. After five years of Nazi occupation, my father was determined to give his children a better future, so we came to the United States. My brother and I went right off to grade school and began to learn the language so we could become a part of the "American Dream." My father told us that we would have to work hard, but that in America success was possible. Many years later his dreams for us have become reality. My brother is a stockbroker, my sister a high school teacher, and I co-own a growing small business.

From my background came a commitment to employing other immigrants and disadvantaged workers. This we have accomplished. Our work force is comprised of seven Cambodian and Vietnamese immigrants, two Spanish surnamed, one black, one physically handicapped, two former welfare recipients, and one special education graduate from high school. We have grown sufficiently over the past six years to provide our workers with full medical and dental insurance, paid vacations, Christmas bonuses, and reimbursement for tuition if they want to further their educations. But of all these benefits, the one they most enjoy is the flexible work schedules that we allow.

Our experience with flextime and the compressed workweek began in 1979 when we purchased this company. Having come out of the labor market ourselves, we knew the benefits of allowing employees control over their work hours. The advantages of such schedules include reduced commuting costs, more flexible child-care arrangements, more easily arranged doctor and dentist appointments, more leisure time, more time for family, and the ability to pursue further education. There are also advantages for us as an employer — less absenteeism, higher productivity, more concern for the company as a whole, lower turnover rates and overall a more content work force.

Our flextime/compressed workweek operates in two ways: (1) An employee may arrive at work between 7:00 a.m. and 9:00 a.m. and leave work between 3:00 p.m. and 5:00 p.m.; or (2) an employee may opt for four, ten-hour days and have a three-day weekend.

Schedules are worked out with supervisors in advance for the compressed workweek and depend on work flow and scheduling. Flextime needs no prior clearance by supervisors and is in effect for all employees. Essential jobs such as phone coverage are worked out between the employees involved in that particular job.

The system, for the past six years, has always worked and no task has been left undone because of schedule conflicts between employees. In addition, employees who have to miss time for appointments of a longer nature are allowed to work six hours on the day of the appointment and make up the missing two hours before the end of that pay period so no loss of pay occurs. This can result in two nine-hour days, one ten-hour day or any combination they choose to make up the time. Our employees' response to this flexible scheduling is so great that we would lose several key member of our group if we attempted to go back to a conventional 40 hour, five-day week. Our employees feel that since they have something to say about when they work, in return they are very conscious of the need for our company to meet deadlines and to maintain quality control. Their efforts go beyond what would normally be required of any employee because they realize that what happens to the company happens to them. If the company grows they will receive more benefits, greater pay, and more job security.

In light of this cooperation between our employees and our management, you may wonder why the issue of change has even come up. It comes up every time we have a chance to bid on a government job and can't because of the Walsh-Healey and Contract Work Hours Acts that require us to pay time-and-one-half for all hours worked beyond eight in a day. We are a small, growing company and the overtime charges generated under Walsh-Healey effectively prevent a company of our size from being awarded government work. To take away from our employees a benefit so important to them would be damaging to them as well as to the company. In 1979, we had eight full-time employees; today we have 28. To have to deliberately close ourselves out of a potentially large segment of the marketplace hurts our company's ability to grow. We provide a product that the government uses a great deal of: we manufacture and do silk screen printing on loose-leaf binders, index tabs, presentation folders, software packages, and data books. Our products are used to house the endless flow of paperwork and information that runs our society today. The government produces an incredible amount of information and paperwork, but because of the Walsh-Healey Act, we are cutoff from the government portion of this market. We lose out on the chance for increased sales, and the government loses out on increasing the number of companies bidding on a particular job thereby saving money that the increased competition produces. In this day of deficits it is important that savings be gained in every area.

Now we have to deal with a government that on the one hand encourages businesses to grow and thereby lower unemployment, but at the same time shuts out untold numbers of small companies like ours from the enormous market for government procurement because of an outdated regulation. The policy of our company is to decline to bid on government contracts and that position will continue until some change is made in the Walsh-Healey Act. If the government's concern is for the potential of abuse by employers of their employees they should be aware that the Fair Labor Standards Act as well as the law of 49 states allow the use of flexible schedules like ours. Small companies which choose to bid on government work and have a flexible or compressed workweek must either give up the option of competing for government contracts, or they must take from their employees the flexibility in scheduling that is so important to them. That is unfair and everyone loses. I urge the member so this committee to take favorable action on S. 1105, The Federal Contractors Employees Flextime Act.

Mr. Chairman, I greatly appreciate the opportunity to testify on this matter and I will be happy to respond to any questions you may have.

Statement of: Charles Johnson
Head Pressman
United Lithographic
Services, Inc.
Falls Church, VA

Mr. Chairman and members of the Subcommittee, my name is Charles Johnson. I am head pressman at United Lithographic Services, Inc., of Falls Church, Virginia.

United has had extensive experience with compressed work schedules having instituted them in 1974 and continued their use to the present time. I have been employed at United for 11 years and have worked the entire time on a compressed workweek. When I began my career at United I worked a four day, ten-hour schedule during the night shift. In spite of the fact that I would have rather worked days, I found the compressed schedule to be far more preferable than the eight-hour shift the company previously used. It gave me an extra day off each week and more time to spend with my family. It also saved me a great deal of commuting time and expense and caused less wear and tear on my car. All of my coworkers were pleased with the compressed schedule and wanted it to continue.

In 1976, United went an additional step and implemented a three-day workweek with 12-hour days. Combined with 4-10s, this schedule filled out the remainder of the week at United and kept the plant running seven days a week. The three day shift quickly became the most popular shift at the plant and I was able to switch from working the 4-10 schedule at night to the 3-12 schedule during the day.

I have always been pleased with the compressed schedules at United and I count it among one of the best fringe benefits I have. When the new three day shift was implemented at United, all of the employees got together and decided how we wanted to structure the hours. We agreed to run the shift from 4 a.m. to 4 p.m. so we all could avoid the worst of rush hour traffic going to and from work.

Those of us at United on the 3-12 schedule get paid overtime for all work over 36 hours per week. Those on the 4-10 schedule get paid overtime for all work beyond 40 hours per week.

United's compressed schedules worked fine until 1979 when an inspection by a representative from the Department of Labor discovered that the company was in violation of the Walsh-Healey Act's daily overtime requirements. We were working on a number of government contracts at the time and apparently all of the employees should have been paid overtime after eight hours a day. Once the violation was discovered, United had to calculate the back wages starting from 1977 for all employees on the compressed schedules. The result was a back payment of $50,000 that was divided among us. While we certainly did not offer to give the money back, it was understood by everyone that the windfall was hard to justify. The thing we were most concerned about, however, was preserving our compressed schedules. Because United was at a point that it could not immediately phase out all of its government contracts, we were afraid the result would be a switch back to a regular eight-hour workday. This was something we wanted to avoid at all costs.

The options available to us included reverting to a five-day week, discontinuing government contracts or changing our compensation system by lowering our base hourly wage to the point that althoguh we pay overtime at a rate of time and a half for work over eight hours per day or 40 hours per week, the total weekly wage would not change. The latter suggestion was made by the Department of Labor and was the choice the company finally decided to make.

While this solution may at first sound practical, it is a cumbersome, inconvenient solution at best. The biggest problem it presents to employees is that it unfairly penalizes us when we have a slow week and finish work early. If for some reason we don't work our full 12 hour shift, we lose out on the overtime that would boost the weekly take home pay to the appropriate level.

As you might imagine, this tended to dim our enthusiasm for getting government printing contracts. As a result, we have virtually phased out all government work in our plant. The federal government has thus lost out on the services of the best publication printer in northern Virginia. As a taxpayer as well as an employee, I think this situation is ridiculous.

My fellow employees and I at United Lithographics feel that we are being penalized because our company sought to provide us with a better work environment. This situation is simply unfair, and I hope that the Walsh-Healey Act can be changed for the better.

When United ran into problems with Walsh-Healey back in 1979, I told the management that I would do anything I could to help them protect our compressed schedules and to change the Walsh-Healey Act. I never imagined at the time that they would take me up on my offer by asking me to appear before a committee of the United States Senate. I am grateful for this opportunity to appear before you and I hope that you will do what you can to correct the problems in the Walsh-Healey Act and the contract Work Hours and Safety Standards Act.

Senator NICKLES. Thank you, Mr. Johnson.

Just a quick question. So the net result is United Lithographics are not bidding on Government contracts now?

Mr. JOHNSON. That is correct. If we do bid—well, we do very little Government work now. Unfortunately, the net result was a change in pay rates for all the employees, so that we could continue to do our Government work. This lowers our hourly wage for the first 8 hours, and yet increases our overtime rate, so that we could take home the same dollars.

Senator NICKLES. In other words, employees and management said we are trying to work this thing out, and might make some adjustments. But your preference would be that the Government basically allow the employer and employee to work it out, and not to mandate that if you are doing Government work, you have to follow this particular schedule that mandates overtime over 8. You would prefer to have it set up the way you had it previously?

Mr. JOHNSON. Yes. So that we were earning straight time for an entire 12 hours.

Senator NICKLES. Then have your workweek done in 3 or 4 days?

Mr. JOHNSON. Three days. Right now we work four 12-hour-per-day shifts on our equipment. Actually, we work around the clock. We work 24 hours a day, 6 days a week, and employees work either a day shift of 12 hours, or a night shift of 12 hours.

Senator NICKLES. When the employees were given the option, when you first went from four 10's into the three 12's, there were more employees that were interested in doing that?

Mr. JOHNSON. Yes. It is a very growing point. It helps us to maintain and get good, qualified employees, and is the reason most people come to work there.

Senator NICKLES. Is that right? How about safety and productivity? In that type of business I would think you would get away with it, and the employees would be satisfied. In other businesses or industries it might not work.

Is there a safety factor that comes into play by working those extra couple of hours?

Mr. JOHNSON. Not that we have noticed. Productivitywise, I think having people on equipment 12 hours produces more than having different people every 8 hours.

Senator NICKLES. Mr. Cooper, do you want to add something?

Mr. COOPER. One of the interesting points about the system they have at United Litho is that it was proposed by the Labor Department in 1979, that they lower the base wage, so the net result would be the same.

So, in effect, the Labor Department gave them a way around Walsh-Healey restrictions. We recommended this to other companies, and it is obviously a cumbersome payroll system.

If someone loses a few hours, you have to go back and readjust their wages.

Senator NICKLES. Employees and management said you are going to make us quit bidding on Government contracts. The more bidders we have on Government contracts, the better price that the Government taxpayers are going to get for their products.

Then the Labor Department says, wait a minute, if you adjust it downward, you could come out with the same end result. In other words, playing games to try and almost get around the law that they are forced to implement.

Mr. Cooper. That is exactly right.

Senator Nickles. It is a backward way of the DOL saying we agree with you that this law is not working, and we will try to help you get around it.

Incidentally, we will have a statement by Susan Meisinger, Deputy Under Secretary for Employment Standards, U.S. Department of Labor, which we will include in the record at the appropriate place, endorsing this legislation.

We also have a statement by William Armstrong on the Walsh-Healey reform legislation, which we will include in the record.

We also have a letter from the administration, all of which will follow my opening remarks.

One final question.

Mrs. Trudelle, you have a little company of 28 employees. Right now you are not bidding on Federal work?

Mrs. Trudelle. No, it is not worth our while, because we would have to make too many adjustments, and we are not computerized. We are one of those small companies out there that are just at the point now where we are going to start to computerize administrative and accounting functions, but to do the kind of logistics that were recommended by the Department of Labor, we could not do it. We would literally spend days to compute 1 week's payroll. It is not worth it for us, but we really would like to do Government work.

Senator Nickles. You would like to have the opportunity to be able to bid on those contracts. Right now your thinking is if you did Government work it would probably be 10 or 15 or 25 percent, depending, on a growing basis. It is not really worth the hassle, and either changing labor rates, or not combined with the law and possibly looking at back wages and penalties, and so on.

Mrs. Trudelle. In a small company it is even more difficult, because we do not have the resources available. If we were asked to go back and compute wages for the last 5 years, I would imagine myself spending months literally doing it manually. So it is a very difficult situation for us, because we are small.

Senator Nickles. Your employees like the compressed week or flextime?

Mrs. Trudelle. They have a choice of either a compressed week or flextime. They love it. A lot of people like it for day-care arrangements for their children.

Senator Nickles. By compressed week you mean?

Mrs. Trudelle. Four 10's.

Senator Nickles. And flextime?

Mrs. Trudelle. Arriving at between 7 to 9, and leaving between 3 and 5. If they have a doctor's appointment, you can adjust it to do two 9's, to make an extra 2 hours, and it is always the employee's option. It is never ours. Management rarely, if ever, gets involved, and none of the jobs are left undone. Everything is covered. It is all done among the employees themselves.

Senator Nickles. It sounds to me that would be very much to the employees' advantage, and your cooperation with them is to be commended. You are making progress and, again, not to repeat myself, but it irritates me when the Federal Government comes in and says you cannot do it, or you do not get to bid on the contract if you do do it.

Mrs. **Trudelle**. I did not vote for that kind of help.

Senator **Nickles**. I understand. We will give you some help you can vote on, or be in favor of.

Thank you very much.

Mrs. **Trudelle**. Thank you.

Senator **Nickles**. Our next panel consists of Richard J. Hart, director, human resources, Blount Bros., Montgomery, AL, representing the Associated General Contractors of America; also Dan L. Stefanoff, chairman of the South Country Builders, Jenks, OK, representing the Associated Builders & Contractors, Inc.

STATEMENTS OF RICHARD J. HART, DIRECTOR, HUMAN RESOURCES, BLOUNT BROS., MONTGOMERY, AL, ACCOMPANIED BY DENNIS BRADSHAW; AND DAN L. STEFANOFF, CHAIRMAN, SOUTH COUNTRY BUILDERS, JENKS, OK

Senator **Nickles**. Mr. Hart, you may proceed.

Mr. **Hart**. Yes, sir.

Mr. Chairman, I want to thank the committee for inviting AGC to testify on behalf of this bill. With me today is Dennis Bradshaw of the AGC staff.

My name is Richard Hart. I am director of human resources for Blount Bros. Corp., a major general contractor operating nationally in the United States and a contractor with several ongoing Federal construction projects.

I will only highlight a few items contained in the written testimony.

Senator **Nickles**. Thank you.

Mr. **Hart**. One feature of the Walsh-Healey Act that no one has mentioned thus far is their definition of the work day which is defined as any 24-hour consecutive period. This creates a minor problem in the construction industry when you want to change a start time, for whatever reason, for the next day's work. Let us say we finished work at 4:30 and the next day we wanted to start at 7 instead of 8, maybe due to a concrete pour or material delivery. We are penalized by having to pay overtime because work performed within the 24-hour consecutive basis of the Walsh-Healey Act. This is a little noticed feature but something I think should be highlighted as well as four 10's and work performed over 40 hours a week because it is costly; and if contractors have to add that into a bid, it is going to go as a cost to the customer. It is a secondary problem, but it is still one that is perplexing to us.

Senator **Nickles**. Anything that is done in that 24-hour period of time?

Mr. **Hart**. Yes, sir; if they can finish 8 hours of work on Tuesday at 4:30 and we ask the concrete crew to come in at 6 o'clock for the concrete pour, then the work performed between 6 and to 8 is overtime because it is within the 24-hour consecutive work period.

Senator **Nickles**. It is probably even a hassle just compiling and keeping the records, more than the amount of overtime that is involved. The bookkeeping requirement could be onerous.

Mr. **Hart**. Yes; there are reasons why a contractor may want to vary from time to time his start. It could be due to delivery of materials, the scheduling of one type of work, or any number of reasons, but we just do not do it on the Federal jobs because of the hassle involved and as a result that cost is somehow passed on to the consumer.

Senator **Nickles**. Good point.

Mr. **Hart**. I believe that we want to stress that the major gain of accepting Senate bill 1105 would be a lowering of costs in the construction industry to the customer. All the bids in the construction industry for Federal work are hard dollar bids, with very few exceptions lump sum contracts. A lump sum contract is cost plus profit. That is what constitutes the lump sum contract. The profit is accrued through the marketplace, how many are bidding and what is the risk. It is not a creature involved in cost. So when we take a look at the change, we are talking about reducing the cost without reducing profit, which is something I am interested in; but at the same time without reducing income to the worker. We are reducing costs by doing several things at the same time.

By working a four-10's schedule, we cut our startup costs. We only have to start four times a week instead of five times a week. Our equipment rentals and utilization are more economical. It has been proven that it reduces absenteeism and turnover because it provides the workers with the extra day off on Friday or whatever day might be free for them, and this helps in the cost.

There have been some contractors who have done it. We have not done this ourselves, but you can actually compress a schedule by what they call a rolling four-10's, where you actually work 7 days a week and thereby compress a schedule 20 to 30 percent. To shorten the job that much in the construction industry, like many others, is very cost effective because time equals money, and if we shorten the schedule, the customer gets a cheaper price. That kind of schedule is dependent on two things; one, that the design is complete, and, two, that the materials are available for use.

By the very nature of Federal construction contracts, they are hard dollar contracts with design fundamentally complete before the bid is submitted. We therefore bid off a set of completed drawings. Also most Government projects are not exotic in terms of materials that are used in them. In our industry they are brick and mortar jobs, so there is no question of waiting for some exotic piece of equipment or material to be developed for the schedule. So in the Government contracting sphere, an opportunity to move forward with scheduling is important, and schedule compression for a project without overtime after 8 hours can result in cost savings.

As to the income for the workers, one example I might give is where we have two projects, one working four 10's and one working five 8's. It rains 2 days a week. The four 10-hour day project can still work 5 days and the workers receive, 30 hours pay. On a five 8-hour day project, the worker works 3 days and he gets 24 hours pay. So that the effect of the four 10's maximizes the real income to the worker immediately.

At the same time it does not increase the cost to the employer. The cost is the same. We pay the same straight time rate. It is also possible using Saturdays as makeup days. Even if it rained 3 days a week, we could still work a Saturday on a four 10's schedule.

In the construction industry there are a lot of areas where labor and management do not agree and people know that, but right now the four 10-hour work pay alternative at the local negotiation level, and even at the national negotiation level, is accepted. In the written testimony you will see a list of locally bargained contracts that contain four 10's options for the employers. Almost all the national agreement negotiated by the International Union contain four 10's options that are available for the employers.

It seems odd that the Government has a policy supporting collective bargaining and, as some of the other industries pointed out here, where labor and management agree the Government steps in and says you cannot do that. That does not make any common sense.

I think for construction contractors, we are a little bit different than the other people who have testified thus far. We can continue to bid Government projects because each project is much in and of itself a piece of business. So because we work on a Government job under Walsh-Healey in one location, we can still work on private jobs elsewhere without reference to Walsh-Healey. So we have an advantage over other industries that have testified thus far. But it is not easy for us to have two different employee policies in our company, one for public work and one for private work. It would be a lot easier if we had one employment policy for both, and also I think it is important to note that only non-Federal employees are penalized in this way in the sense that the Federal Government itself permits flextime and yet deny it to the private sector. I find that that is a little nonsensical, too, but I am just a construction man with a practical mind. [Laughter.]

The main thrust, I think, Senator, is if you adopt this legislation you will reduce the cost of publically funded construction. Someone might ask how much. I have not the slightest idea, but if you reduce the total Federal construction budget 1 percent per year, how much money would that be? As I say, I do not know how many projects and how much they cost, but with our corporation we have under contract with the Federal Government approximately $150 million. If you save 1 percent of it, it is a beginning.

Thank you, Senator, and I will be glad to answer any of your questions.

[The prepared statement of Mr. Hart follows:]

TESTIMONY

OF THE

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

BEFORE THE

LABOR SUBCOMMITTEE

OF THE

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

ON

S. 1105 -- THE FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT

JUNE 13, 1985

AGC is:

- More than 32,000 firms including 8,400 of America's leading general contractor firms responsible for the employment of 3,400,000-plus employees;
- 110 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utility facilities; and
- Over $100 billion of construction volume annually.

My name is Richard J. Hart and I am Director of Human Resources for Blount Brothers Corporation, a commercial/industrial building firm located in Montgomery, Alabama. I am representing the Associated General Contractors of America. Accompanying me today is Dennis M. Bradshaw of the AGC staff. We are pleased to testify today in support of S. 1105, which would amend both the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act.

The Associated General Contractors of America (AGC), with its 110 chapters nationwide, is comprised of more than 32,000 firms, including 8,400 of America's leading general contracting firms responsible for the employment of more than 3,400,000 individuals. These members perform more than 80 percent of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities. AGC's members include both collective bargaining and open shop contractors.

Every year, thousands of AGC contractors perform federal and federally-assisted construction contracts and are subject to the provisions of the Walsh-Healey and the Contract Work Hours and Safety Standards Acts. These laws, as currently written and administered, unnecessarily restrict a contractor's operations and increase the costs of federal and federally-assisted construction.

Under current laws contractors working on federal or federally-assisted projects are required to pay overtime rates for hours worked over eight in a single day. This eight-hour restriction forecloses the option of utilizing a workweek of four 10-hour days (4-10s), or other flexible workweek schedules, when the contractor and the employees desire to do so.

The workday is presently administratively defined under both of these laws as a period of 24 consecutive hours beginning at the same time each calendar day. Consequently, work scheduled to begin earlier than the "regular" start time is treated as the previous calendar day's work. As a result, if an employee works eight hours one day and starts one hour earlier than normal the following day, that one hour must be paid at an overtime rate -- even if the employee eventually works fewer than eight hours in that calendar day. This effectively penalizes employers for adapting work schedules to benefit both the customer and the employees as jobsite conditions change.

Enactment of S. 1105 will result in greater productivity and substantial cost savings for a significant user of construction services -- the United States Government. Productivity improvement associated with a 4-10s schedule has been well documented in studies undertaken in other industries.

Specific productivity gains associated with a 4-10s schedule include:

- lower average daily start-up costs,
- less down time for equipment will result in savings on the project. Production costs are lower when the machinery can be used more hours each day,
- increased ability to maintain scheduled completion dates for projects and better workforce utilization, and
- reduced absenteeism, tardiness and employee turnover thus increasing productive hours of work per employee.

Another important benefit of 4-10s is the ability it provides contractors to maintain schedules -- and for employees to maintain their level of income -- when inclement weather interrupts work on a project. With a 4-10s schedule, a contractor has increased flexibility to schedule work to compensate for time lost when a project is shut down because of weather.

A 4-10s schedule also reduces fuel consumption and commuting costs for employees by 20 percent. This is especially appealing to employees traveling long distances to work on construction projects in remote locations. A 4-10s schedule also provides employees more time with their families without a loss of income.

Local building trades unions increasingly view with favor the 4-10s schedule. Clearly, they do not view such schedules in any way as an attack on the "eight hour day." Many local unions and non-represented employees agree that the 4-10s schedule is not to be viewed as a threat, but as an opportunity. Many contractors operating without collective bargaining agreements have adopted flexible schedules on private work.

The Construction Labor Research Council reports that at least 182 construction collective bargaining agreements now in effect on private work in 29 states and the District of Columbia provide for 4-10s schedules, with overtime rates applicable for work in excess of 40 hours per week or more than 10 hours per day. A listing of these agreements is attached for the Subcommittee's information. In addition, most national and project collectively bargained agreements have a 4-10 hour day option.

In addition to preventing these cost savings and effectiveness, the existing federal 8-hour restriction also denies the parties to collective bargaining agreements the opportunity to implement the terms of their collectively bargained agreements on federal work. This is inconsistent with the federal labor policy of encouraging industrial self-government through free and voluntary collective bargaining.

We urge but one revision to S. 1105. Since S. 1105 would not interfere with free and voluntary collective bargaining for overtime provisions in excess of the statutory minimum, Section 3 of the bill, which states that the amendments will not affect collective bargaining agreements in effect on its date of enactment, is unnecessary. Further, the language of Section 3 could be construed in ways not intended by the drafters of the bill, particularly to restrict utilization of flexible scheduling under current collective bargaining agreements or to imply that the Act does affect collective bargaining agreements negotiated after the bill is enacted. AGC recommends that Section 3 of the bill be deleted.

The currently mandated 8-hour restriction interferes with the realities of what construction workers now want and agree to with increasing frequency in collective bargaining agreements. That interference translates into higher construction costs for federal or federally-assisted construction projects and a greater burden on an already over-burdened federal budget. Contractors, construction workers, the federal government and taxpayers will all gain by the increased productivity stimulated by the enactment of S. 1105.

Removal of current restrictions to permit employers to schedule work in various combinations of hours in a forty-hour workweek, including a 4-10s schedule, would place contractors and their employees performing work in the public and private sector on an equal footing.

Employees of the Federal Government are permitted to work a 4-10s schedule, under the Federal Employees Flexible and Compressed Work Schedule Act. As a matter of simple equity, this right should not be withheld from contractors and employees engaged in federal or federally-assisted construction work.

Thank you for granting AGC the opportunity to present its views in support of S. 1105. I would be pleased to answer any questions at this time.

Collective Bargaining Agreements Containing Provisions for 4-10 Hour Day Workweeks

Birmingham, Alabama

Iron Workers (Structural)
Millwrights

Mobile, Alabama

Bricklayers
Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)
Millwrights
Pipefitters (Mixed PL-PF)
Sheet Metal Workers
Teamsters

Phoenix, Arizona

Millwrights

San Francisco, California

Boilermakers
Laborers (H/H)

Colorado Springs, Colorado

Carpenters

Denver, Colorado

Glaziers
Iron Workers (Structural)
Millwrights

Washington, D. C.

Carpenters
Millwrights
Pipefitters (PL-PF)

Jacksonville, Florida

Pipefitters (Mixed PL-PF)

Miama, Florida

Pipefitters (Mixed PL-PF)

Pensacola, Florida

Carpenters
Cement Masons

Tampa, Florida

Pipefitters (Mixed PL-PF)

Atlanta, Georgia

Carpenters
Iron Workers (Structural)

Savannah, Georgia

Crane Operators (Op. Eng.)
Iron Workers (Structural)
Pipefitters (Mixed PL-PF)

Boise, Idaho

Glaziers

Ft. Wayne, Indiana

Painters

Hammond, Indiana

Boilermakers

Topeka, Kansas

Laborers (Bldg.)

Wichita, Kansas

Crane Operators (Op. Eng.)
Iron Workers (Structural)

Louisville, Kentucky

Boilermakers

Paducah, Kentucky

Cement Masons
Laborers (Bldg.)
Teamsters

Alexandria, Louisiana

Laborers (Bldg.)

Baton Rouge, Louisiana

Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)
Lathers
Painters
Pipefitters (Mixed PL-PF)
Plumbers
Teamsters

Lake Charles, Louisiana

Laborers (Bldg.)

New Orleans, Louisiana

Asbestos Workers
Bricklayers
Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Glaziers
Iron Workers (Structural)
Laborers (Bldg.)
Teamsters

Shreveport, Louisiana

Bricklayers
Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)
Teamsters

Boston, Massachusetts

Boilermakers

Baltimore, Maryland

Carpenters
Iron Workers (Structural)
Laborers (Bldg.)

Lansing, Michigan

Cement Masons (H/H)
Crane Operators (H/H)
Laborers (H/H)
Teamsters (H/H)

St. Louis, Missouri

Boilermakers

Billings, Montana

Iron Workers (Structural)

Kalispell, Montana

Ironworkers (Structural)

Albuquerque, New Mexico

Bricklayers
Cement Masons
Plasterers
Teamsters

Reno, Nevada

Painters

Buffalo, New York

Boilermakers

Niagara Falls, New York

Crane Operators (H/H)

Akron, Ohio

Pipefitters (Mixed PL-PF)

Norwalk, Ohio

Pipefitters (Mixed PL-PF)

Oklahoma City, Oklahoma

Carpenters
Iron Workers (Structural)

Ponca City, Oklahoma

Carpenters

Tulsa, Oklahoma

Bricklayers
Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Laborers (Bldg.)
Millwrights

Portland, Oregon

Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)
Teamsters

Pittsburgh, Pennsylvania

Boilermakers

Williamsport, Pennsylvania

Cement Masons

Nashville, Tennessee

Pipefitters (Mixed PL-PF)

Abilene, Texas

Bricklayers

Austin, Texas

Carpenters
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)
Pipefitters (Mixed PL-PF)

Beaumont, Texas

Cement Masons
Iron Workers (Structural)
Pipefitters (Mixed PL-PF)
Teamsters

Galveston, Texas

Bricklayers
Cement Masons
Painters

Houston, Texas

Asbestoes Workers
Boilermakers
Bricklayers
Carpenters
Cement Masons
Crane Operators (Op. Eng.)
Floor Coverers
Iron Workers (Structural)
Laborers (Bldg.)
Millwrights
Painters
Pipefitters (Mixed PL-PF)
Plumbers
Sheet Metal Workers
Teamsters
Tile Layers

San Antonio, Texas

Pipefitters (Mixed PL-PF)
Sheet Metal Workers

Wichita Falls, Texas

Iron Workers (Structural)

Salt Lake City, Utah

Carpenters (H/H)
Cement Masons (H/H)
Crane Operators (H/H)
Crane Operators (Op. Eng.)
Glaziers
Iron Workers (Structural)
Laborers (H/H)
Laborers (Bldg.)
Teamsters (H/H)

Newport News, Virginia

Cement Masons
Painters
Plasterers
Pipefitters (Mixed PL-PF)

Norfolk, Virginia

Asbestos Workers
Bricklayers
Carpenters
Iron Workers (Structural)
Laborers (Bldg.)
Painters
Pipefitters (Mixed PL-PF)

Richmond, Virginia

Asbestos Workers
Painters
Plasterers
Pipefitters (Mixed PL-PF)

Roanoke, Virginia

Asbestos Workers
Painters
Pipefitters (Mixed PL-PF)

Seattle, Washington

Crane Operators (Op. Eng.)
Iron Workers (Structural)
Teamsters

Spokane, Washington

Carpenters
Iron Workers (Structural)
Laborers (Bldg.)
Pipefitters (Mixed PL-PF)
Teamsters

Appleton, Wisconsin

Laborers (Bldg.)

Janesville, Wisconsin

Carpenters

Madison, Wisconsin

Carpenters
Crane Operators (Op. Eng.)
Iron Workers (Structural)
Laborers (Bldg.)

Oshkosh, Wisconsin

Bricklayers

Key

Bldg. - Building
H/H - Heavy/Highway
Op. Eng. - Operating Engineers
PL-PF - Plumbers and Pipefitters

****This list does not include the many project agreements which have been negotiated which provide for 4-10 hour day workweeks.**

Senator NICKLES. Thank you, Mr. Hart. We appreciate that. Mr. Stefanoff.

Mr. STEFANOFF. Mr. Chairman, I am Dan Stefanoff, chairman of South Country Builders, a general contractor firm which at this time employs 100 employees. I am also owner of Stefanoff Electrical Corp., which employs 20 electricians.

I am not here only representing my companies, Mr. Chairman, but also the Associated Builders and Contractors, which, as you know, is a national association of over 18,000 contractors and other related members.

I will also, Senator, capsulize my remarks. We certainly agree that adopting this Senate bill 1105 will reduce absenteeism, increase leisure time for our employees, reduce our travel time and expense some 20 percent. We have also seen in using the compressed work week in our companies an obvious 20 percent decrease in startup and shutdown time, which we see relating to enhanced safety conditions on a job site, on our job sites, since startup times in the morning and shutdown times in the afternoon are usually when most of our accidents occur. We have seen cost savings in terms of equipment, particularly in the cold winter months when, as my colleagues at the table will tell you, the cost of most construction or most equipment breakdown is startup time during the cold winter months.

We agree with all those things, but I would like to approach the issue from a little different stance, if I may. One of the basic concepts of ABC and its merit or open shop approach is to promote, encourage and recognize and then reward worker productivity. We recognize labor not only as a resource but, in fact, as a very precious resource. Our employees are very, very important to us. I think any successful company in the environment that we have been in in the past few years has to have a very high social conscience, if you will, in terms of its employees. So one of the things that we do as many, many companies do is we have what some people refer to as quality circles. We simply call them shop meetings. One of the things that started coming out of those shop meetings in the last couple years is the desire for flexible time that has led—and again we know the only way we can increase or the key way to increase worker productivity is through worker satisfaction, job satisfaction. We strive to be creative and come up with ways to make our employees' jobs more satisfying, more gratifying.

We recognize those people as being very responsible, very prideful individuals and would strive to make their job more meaningful to them. My responsibility as a manager is to take care of my employees, and it is most important to them these days that they have five full paydays every week. And, in fact, in the construction business, as has been alluded to, we experience a lot of rain days, a lot of rainouts, and we may never get started in the morning because of rain. Our job may be shut down at noon because of rain. On a Walsh-Healey project we are not budgeted overtime. It is not in the budget. We cannot afford it and if we are rained out, we are simply rained out. On a private project when we have the flexibility and we can, again, work a long day, use Friday, work a couple long days and make up the rain days, the important thing is our employee takes home a full paycheck because he is budgeted and his family has budgeted a full paycheck, and that is awfully important to him.

We found our employees to enjoy their 3-day weekends. We have noted their being fresh on Monday morning after that 3-day weekend and certainly that has enhanced their productivity.

I would like to address the issue of safety on the job sites. We have experienced absolutely no increase in job site accidents that could be attributable to fatigue or additional hours. It is interesting to note that under the concept of flextime workers and their supervisors are able to make many of those determinations themselves.

Senator, you certainly know what our summertimes are like in Oklahoma. The fact is if we have a crew that may be doing finish work inside a building and, in fact, the air conditioning is on, many times our employees may work three 13-hour days to make a full week and it is cool and there is very little fatigue and they enjoy that very much. In fact, they get a 4-day weekend. We certainly see the increase in productivity because they are there for a 13-hour stretch. We do not have the start and stop. As long as we are keeping material flow to the job site and coordinating the other subcontract work, it works out very well for us. But if, in fact, that particular project is outside and it is 95 or 100 degrees, it has been our experience that a 13-hour day is too long, and so in those cases we limit it to four 10's.

I would like to address for a moment, if I may, the taxpayers' interest in all this discussion we have had. I would like to use the example of two similar facilities, perhaps school buildings, Senator, one on either side of the street, one a public school and the other a private school. One is publically funded and would certainly be under the provisions or fall under the provisions of the Walsh-Healey. The other is a private project that is not encumbered by those restrictions. Both jobs are bid, hard bid turnkey projects. At a time that the construction industry and construction users have through the round table discussions and other ventures attempted to devise cost containment methods and ways to curtail cost increases in our industry, one of those suggestions has been the compressed work week, four 10-hour days. I think the Grace Commission report even referred to that concept. If, in fact, that has been identified as a cost saving measure, then a private project, if that contractor is going to use a compressed work week, that cost savings is reflected in his bid. On the public school across the street, and let us assume these are identical buildings, that same contractor's bid is going to be whatever percentage—if, again, it is no more than 1 percent, his bid is going to be 1 percent higher than the same bid for the similar type work across the street, and the question then is why is not this cost saving technique passed along to the taxpayer? Why must the taxpayer always pay more for the construction of his buildings than the private sector most pay for theirs?

I thank you very much, Mr. Chairman, and I too would be happy to answer any questions you may have.

[The prepared statement of Mr. Stefanoff follows:]

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STATEMENT OF

DAN STEFANOFF

FOR

ASSOCIATED BUILDERS AND CONTRACTORS

AND THE

NATIONAL CONSTRUCTION INDUSTRY COUNCIL

BEFORE THE

SUBCOMMITTEE ON LABOR

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

CONCERNING

AMENDING THE WALSH-HEALEY PUBLIC CONTRACTS ACT
AND THE CONTRACT WORK HOURS STANDARDS ACT TO
PERMIT EMPLOYEES OF GOVERNMENT CONTRACTORS TO
WORK ANY COMBINATION OF HOURS IN THE 40-HOUR WEEK

JUNE 13, 1985

Mr. Chairman and Members of the Subcommittee:

I am Dan Stefanoff, chairman of South Country Builders, a general contractor with 100 employees, and owner of Stefanoff Electrical Corporation, an electrical contracting firm employing 20 individuals, of Jenks, Oklahoma. I am here today in support of S. 1105, The Federal Contractor Employees Flextime Act, introduced by Senator William Armstrong. Not only do I speak for my two companies, but I also represent Associated Builders and Contractors, a national trade association of 18,000 contractors, subcontractors, suppliers and related companies, as well as the National Construction Industry Council, an umbrella organization of more than 25 major associations in the industry representing large and small companies alike.

I thank the Chairman for holding hearings on this much-needed reform legislation and for allowing me the opportunity to appear before the Subcommittee. This morning, I would like to summarize the successful experience of our companies with the compressed workweek.

Both South Country Builders and Stefanoff Electrical Corporation use one type of compressed workweek — four 10-hour days, from 7:30 a.m. to 5:30 p.m. — on approximately 40 percent of our projects. The only situations in which crews work five-eight hour days are those in which we do not have sufficient control over the schedules of outside subcontractors. Although we previously bid on federal construction projects, we no longer seek these contracts because the Walsh-Healey Act requires payment of overtime wages after eight hours in a day. This restriction makes the use of the four-day week too costly and negates our goal of submitting the most competitive bids possible.

If I could leave you with one point about the value of the compressed workweek, Mr. Chairman, it would be this: Employees — not management — requested this type of work schedule, and in my company it is the single most important factor in employee satisfaction and productivity.

We began to use compressed workweeks when the observance of certain national holidays was moved to Mondays to allow workers three-day weekends and to avoid interruptions of the workweek. At that time, company management was working aggressively to improve job satisfaction and productivity as well as to reduce absenteeism, tardiness and accidents. We actively involved our employees in this program through small discussion groups now widely referred to as "quality circles."

The employees themselves originated the idea of a compressed workweek, asking for a schedule of three 12-hour days and one four-hour day, which allowed a 3 1/2-day weekend. We soon found that the 12-hour day created fatigue in construction situations and subsequently implemented the four-day 10-hour workweek as the optimum schedule. This arrangement has proved especially important to working parents who must balance child care and other personal obligations with their job responsibilities.

Employee requests for compressed or flexible workweek schedules are not unique to merit or "open" shop companies such as South Country Builders and Stefanoff Electrical Corporation. On May 6, when the Chairman introduced a Sense of the Congress resolution calling for deficit reduction through Walsh-Healey reform — which the Senate passed by a vote of 86-5 — he included in his remarks a list of 172 collective bargaining agreements in the construction industry containing provisions for a compressed workweek. Just a week ago, BNA's "Daily Labor Reporter" carried the news that the construction of a $450 million assembly plant for Mazda automobiles in Flat Rock, Michigan, will be performed under a project agreement with the Detroit Building Trades Council that includes, among other clauses, a provision for a workweek of four 10-hour days. In both union and non-union construction, the compressed workweek clearly is gaining wider acceptance.

As I mentioned, only construction crews on 40 percent of our jobsites work the four-day week. Management and administrative employees work a conventional schedule of five eight-hour days because they must deal with companies and agencies that do not use compressed workweeks. We do, however, allow these employees to use flexible schedules occasionally on a case-by-case basis to help them meet special personal needs.

When you consider that employees initiated the move to a compressed workweek, you can fully appreciate its value as both an economic and as a fringe benefit. Many of our crews live in rural areas of the state, and many of these individuals maintain small family farms. It is not uncommon for them to drive at least 100 miles a day to and from jobsites in order to hold the higher-paying construction jobs available in the Tulsa area. The four-day week allows them to take advantage of job opportunities in the building industry and work their farms — and still enjoy time off. Also, eliminating a day of commuting with the four-day schedule cuts travel costs by 20 percent, which is a very important savings to rural workers.

Employees equally appreciate the extra personal time the compressed workweek gives them. Crews include many sportsmen who hunt and fish in the lake area of Eastern Oklahoma, and three-day weekends are an important recreational benefit to them. From my observation, workers return to the jobsite feeling more refreshed and better prepared for their jobs after a three-day weekend.

Support for the four-day week is so strong that employees actively seek assignments on projects operated on this schedule. Transferring personnel to projects requiring a five-day week causes dissatisfaction and a disruption of personal schedules, and we try to avoid these shifts if at all possible. Occasionally, employees have quit when faced with a change to five-day weeks when they knew they could find jobs with other employers using compressed workweeks.

As a construction executive and company owner, I value the productivity gains of the compressed workweek.

By working a four-day week, 20 percent of our start-up and shut-down periods are eliminated compared with a five-day week. No matter how efficient a company may be, start and stop periods cost at least 15 minutes each. Eliminating four of these times by adopting a four-day schedule saves one hour per employee per week. When you multiply the hourly savings by a minimum of 120 employees over the course of a year, the efficiency gain becomes substantial, even for companies the size of South Country Builders and Stefanoff Electrical Corporation.

In these two relatively small companies, we do not have the capability to precisely measure the productivity gains in all areas of operations from the compressed workweek, but I can tell you that repair and maintenance costs for equipment has dropped noticeably. This is due to the fact that heavy construction machinery sustains the most wear during morning starts and subsequent restarts throughout the day, especially in winter. Operating our equipment for longer uninterrupted periods during the compressed workweek eliminates more of these costly starts and reduces the amount paid for parts and labor involved in repair and maintenance work.

Another benefit of the four-day week is the greater opportunity to give construction employees a full week's pay. For example, if a project is rained out on Tuesday, we can use Friday to make up for the lost time and give employees a full paycheck. At the same time, we are able to maintain our project schedule with fewer delays.

Since adopting the compressed workweek, we have seen no trend linking accidents to the longer workday. We have found that employees will anticipate the length of a 10-hour day and adjust their work rate so as to minimize fatigue. A study by a major construction company in the South that used this type of compressed workweek found no evidence that the accident rate increased in the ninth and 10th hours of the workday. Regarding older workers in particular, I can tell you from personal questioning that these individuals report no difficulties with this type of workweek. I reject the notion that the compressed workweek automatically discriminates against older employees.

Before leaving the subject of safety, Mr. Chairman, I would again point out that the compressed workweek is a productivity enhancement that helps us compete more effectively. South Country Builders and Stefanoff Electrical

Corporation simply would not use this work schedule if it reduced efficiency or led to higher costs and longer delays because of accidents. We simply could not afford setbacks such as these.

The four-day week has also yielded benefits in terms of lower absenteeism and turnover as well as in expanded training opportunities for employees. Absenteeism and tardiness create job delays and higher costs, in addition to occasional inequities in the workload of employees on the site. Our managers and foremen make every attempt to help ensure that all employees are present when the workday begins, and we combine this attitude with a strict but consistent policy of dismissing repeat offenders.

We have found that the compressed workweek helps the small percentage of workers who may lack the discipline and maturity to consistently work five days a week to more easily meet a four-day obligation. This type of employee may have begun or already have established a pattern of frequent job changes and thus may not have acquired the skills needed for advancement and higher earnings. If we can motivate an employee to stay with the company, he benefits from our craft training programs and learn skills that will open up development and earning opportunities. The company, in turn, gains more capable workers, promoted from within, and cuts the costs of absenteeism, tardiness and turnover.

The compressed workweek has produced real benefits for both our employees and our companies, but I would caution that this type of schedule requires extra effort in certain areas. Primarily, we are required to mesh the five-day week worked by management and administrative employees with the four-day week of many crews. We have had to become more adept at coordinating four days of construction activity on some sites with five days of activity on others, as well as the management and administration work that goes on five days a week, and sometimes longer, for the two companies. Nevertheless, employee satisfaction and productivity gains far outweigh this extra effort.

The success of South Country Builders and Stefanoff Electrical Corporation depends directly on our efficiency and competitiveness — that is, providing the buyer with quality construction, completed on time and at the lowest responsible cost. The compressed workweek helps us achieve these goals.

Regarding the government's use of these work schedules, only a month ago, a report by the House Committee on Post Office and Civil Service recommended permanent authority for federal workers to use flexible or compressed workweeks. The report noted that more than 10 million private-sector and 300,000 federal workers now use alternative workweeks with great success for their employers and themselves. The Committee report said: "These variations from the standard eight-hour workday evolved as a means of coping with social change, particularly the dramatic increase of women in the workforce, as well as the desire of all employees for a better accommodation between their working and personal lives. Employers found they benefited from better use of buildings and equipment, decreased traffic congestion, and improved attendance, punctuality, and morale. Because employees have more control over their working lives, flexible schedules have also helped reduce conflicts between work and personal needs particularly for working mothers and others with household responsibilities." The report was glowing in its evaluation of the federal experiment with flexible and compressed workweeks: "The surveys found wide and enthusiastic support by employees and management alike for the program. GAO's testimony summed up the consensus of opinion: 'Overall, efficiency of operations, service to the public, employment opportunities, and employee morale have improved.'" In view of the government's enthusiasm for flexible and compressed workweeks for its own employees, it seems only fair that government contractors should have the option of extending their benefit to their employees.

The Bureau of the Census reported that in 1980, 12 percent of all full-time, non-farm wage and salary workers were on flexible or compressed schedules that allowed them to adjust the starting and stopping times of their workdays. Further, the report said that 1.9 million employees worked 4 1/2 days a week or less — an increase of almost 60 percent since 1973. This trend will accelerate, according to the Work in America Institute, which projects that 25 percent of the workforce will use same type of compressed or flexible work schedules by 1990.

These facts, coupled with the positive results experienced by our companies and thousands of others, are convincing arguments for removing the financial penalties that stifle the use of the compressed workweek among government contractors. It is time for our government to leave behind the outdated and unproductive restrictions of the 1930s and adopt a uniform overtime standard that brings efficiency and equity to the procurement process.

Reform of the Walsh-Healey and Contract Work Hours Standards acts is mandatory if the government genuinely wants to reduce the deficit by $2.7 billion in the next five years, as the Congressional Budget Office estimated in February of this year.

The Federal Contractor Employees Flextime Act will achieve these goals. I applaud Senator Armstrong for introducing this legislation, and I thank the 25 cosponsors of both parties who recognize the employee benefits and the efficiency gains possible with the compressed workweek. On behalf of my fellow members of Associated Builders and Contractors, and the National Construction Industry Council, I urge prompt passage of this legislation by this Subcommittee and by the full Labor and Human Resources Committee.

Thank you, Mr. Chairman, for the opportunity to relate our companies' successful use of the compressed workweek. I would be happy to answer any questions you may have.

Senator NICKLES. Thank you very much, Mr. Hart and Mr. Stefanoff.

I have a question on that cost. Both of you mentioned cost savings. Both of you were talking about scheduling and the opportunity to schedule. You mentioned, Mr. Stefanoff, that if you were building on a public project, a Government project, you had to comply with Walsh-Healey and you would not bid it knowing you had to pay overtime. In other words, you would bid it basically on five 8's instead of four 10's or three 13's or whatever.

Mr. STEFANOFF. Straight time.

Senator NICKLES. But, say, they are in a hurry for the building because Mr. Hart mentioned time is money in construction. You have the rental equipment. You have all types of expenses that are going on day by day whether you are there or not. There is a real push and demand to finish that particular building so overtime would be required. If you were talking about time-and-a-half above 8 versus four 10's and you do not pay overtime until you get after 40, the difference is the time-and-a-half on 2 hours per day or actually an additional bonus of 1 hour per day or 4 hours for that week or a 10-percent premium.

Mr. STEFANOFF. Exactly.

Senator NICKLES. And 10 percent of labor costs, I would think in many of these contracts, if they are even close to being competitive, is the difference between getting the job and not getting the job.

Mr. STEFANOFF. That is an awfully valid point, Senator. I can cite you a particular example that occurred in the Tulsa area. There was a school. It was a private school. Because of material delays—it was not a project of ours. Because of material delays the contractor was very much behind on the schedule, but to meet the opening day of school, they went to two shifts of three 13-hour days and they had one shift that worked Monday, Tuesday, Wednesday, and the second shift that worked Thursday, Friday, and Saturday and brought that project in on time at no additional cost to that contractor and allowed that school to open up on time. That would not have been an option if this had been a publically funded school.

Senator NICKLES. Mr. Hart, did you have anything you wanted to add on that?

Mr. HART. I think my colleague has covered it very well. There are times when you get a compressed schedule on federally funded jobs and you also have liquidated damages if you do not meet the schedule, and so, consequently, a contractor has to add into his costs the risk of the liquidated damages and the fact he cannot use the best scheduling tools to perform the work. He is using an archaic system of scheduling the work because of Walsh-Healey and it is not efficient with today's construction technology. So you have an added cost to the owner for that; and if you get into a situation where you need to compress the schedule and it is not the contractor's fault, then the cost is passed on to the customer which in this case is the Government. Once again, the taxpayer pays for added costs even though we have the technology to perform the work without having to pay the extra cost.

Senator NICKLES. If you are doing a very large job and those workers only work on that job, you mentioned, Mr. Hart, you are just going to bid it and it is just going to cost that much more. If you are going to continue working overtime and so on, you are going to have to pass that on to the taxpayers. What about the confusion and the difficulty if you have several construction projects in progress, some public, some not public, where you have your electricians hitting work on the Federal building, then work on the private building, work on the Federal building and work on the private building. You have your concrete people doing several projects and then you have your other finishers and so on. It seems to me if I was a contractor, that could be a very difficult procedure in trying to keep it straight.

Mr. HART. I think if you are saying perhaps we had several projects clustered in the same area and some were public and some were private, how could we move our work force from one to the other. We cannot. So, consequently, there is the lost economies basically on the public side because you can use the economies on the private side. You are right. If we took a crew that worked a half-day on the private project and put it on the public job for a half-day, we are actually operating under the public job's rules and not under the private sector rules. Our carpenters would be subject to Walsh-Healey for the entire day, not just for the time they spend at the Federal project. So as a practical matter we would not do it.

Mr. STEFANOFF. I might add, Senator, we have, in fact, lost employees. We have seen other contractors lose employees when that employee has been on a four 10's schedule and that job completes after 6 months or perhaps a year and the next job assignment he has is a job that because of Walsh-Healey he is required to work five 8's. He has gotten used to the 3-day weekend and he will leave your employ and go somewhere else to gain the benefit of four 10's. It is a very real benefit to our employees.

The last comment I would like to make, if you will allow me, is I promised one of my employees I would make this statement. His question to me was, since you are going to Washington, I would like you to tell the committee that I have sat down with my employer and in good faith worked out something that is a benefit to him and to me both and my Government is denying me the ability to do that on projects that my tax dollars are involved in. I thought it was an awfully good point.

Senator NICKLES. I think it is a very good point, and I appreciate your bringing that point out. Thank you very much.

We have three individuals left: James Burge, corporate vice president and director of personnel with Motorola; Gerard Kenny, vice president of Kenny Construction Co., Wheeling, IL; and William Russell, vice president of Government relations, RCA.

If you would all come forward, I would appreciate it.

Mr. Burge, would you care to be first.

STATEMENTS OF JAMES D. BURGE, CORPORATE VICE PREIDENT AND DIRECTOR OF PERSONNEL—UNITED STATES, SCHAUMBURG, IL, MOTOROLA, INC., FOR ELECTRONIC INDUSTRIES ASSOCIATION; WILLIAM D. RUSSELL, VICE PRESIDENT, GOVERNMENT RELATIONS, RCA SERVICE CO., ROSSLYN, VA, FOR NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES; AND GERARD KENNY, VICE PRESIDENT, KENNY CONSTRUCTION CO., WHEELING, IL, FOR NATIONAL UTILITY CONTRACTORS ASSOCIATION

Mr. BURGE. I am Jim Burge, corporate vice president and Motorola director of personnel for our U.S. operations. My duties include the development and administration of personnel policies and procedures for our 65,000 employees in the United States. I also represent the Electronic Industries Association. I am the vice chairman of the E.I.A. Human Resources Council; both Motorola and the Electronic Industries Association strongly endorse the Federal Contractor Employee Flextime Act.

Motorola receives about 10 percent of its revenues and 20 percent of our employees are involved in some form of Government work. As I mentioned, 65,000 of our employees reside here in the United States. We produce two-way and portable radios, semiconductors, automobile electronics, and data communications equipment. Over the years we have experimented with a number of variations in flexible work hours such as four 10-hour days. Where we have a need for continuous process operations, we have had three 12-hour shifts in 1 week followed by four 12-hour shifts in the following week. To give our employees some leisure time or an extended weekend, we have had some of our operations operate on four 9-hour days and release them at noon on Friday. Again, to make effective use of our capital equipment, we have been using weekend shifts of two 12-hour days, very attractive to college students, by the way, and then flextime with the standard CORE hours or 5 or 6 hours with discretionary use of the 2 or 3 hours remaining.

In our company we have developed these all in concert with our employees. We have a strong participatory culture within Motorola. We call it PMP, our Participating Management Program, and consequently we have had very strong employee endorsement of these flexible hours. We have documented cases of reduced absenteeism, improved productivity, reduced turnover, which lowers our production costs. We have also tracked our energy costs and have seen a 12- to 15-percent reduction in energy costs because of the costly startup surge of the electricity. We have had an improved use of capital equipment where we are able to use flexible hours, and in the electronic industries, the high technology businesses, this helps us meet worldwide competition.

Frankly, some of these flexible hours aid in our recruiting of high technology people.

Where we are involved in Government contracts, we see that Walsh-Healey adds at least 10 percent to wage costs for employees on the four 10-hour days and for the two 12-hour days on the weekend shift it adds 16 percent to our wage costs. Frankly, foreign low labor costs are a major concern to us, and we would say that

Senate bill 1105 would allow employers and the employees performing on Government contracts the opportunity to improve their productivity and to enhance their lifestyle. It would allow the optimal use of capital equipment. It would reduce our energy costs and provide the flexibility that is available now to currently noncovered employees.

So Motorola and the Electronic Industries Association strongly support the amendment to require overtime payments only after 40 hours a week.

[The prepared statement of Mr. Burge follows:]

HEARING BEFORE THE SENATE LABOR SUBCOMMITTEE

S. 1105

FEDERAL CONTRACTOR EMPLOYEES FLEX TIME ACT

JUNE 13, 1985

BY

JIM BURGE, CORPORATE VICE PRESIDENT

MOTOROLA, DIRECTOR OF PERSONNEL-US

MOTOROLA, INC.

STATEMENT OF
MOTOROLA INC
ON

AMENDMENTS TO
WALSH-HEALEY ACT
AND
CONTRACT WORK HOURS STANDARDS ACT

Motorola Inc. is grateful for the opportunity to express its strong support to S.1105, a bill entitled the "Federal Contractor Employees Flextime Act." This amendment would amend the Walsh-Healey Act and the Contract Work Hours Act to provide for overtime compensation for hours of employment in excess of forty hours a week, with no limit on hours per day.

I am James D. Burge, Corporate Vice-President and Motorola Director of Personnel--U.S. My duties include the development and administration of personnel policies and procedures for Motorola's 65,000 domestic employees.

THE COMPANY

Motorola Inc., one of the world's leading manufacturers of electronic equipment and components, is engaged in the design, manufacture and sale of a diversified line of products. These products include two-way radios and other forms of electronic communications systems, semiconductors and microprocessor units, electronic equipment for military and aerospace use, electronic engine controls, digital appliance controls, and other data communication products such as high-speed modems, multiplexers, network processors and office automation systems. Motorola's products are manufactured for both the United States and international markets.

WALSH-HEALEY ACT EMPLOYER

Motorola's sales to all federal government agencies, for a variety of advanced electronics equipment and service for use in the U.S. space program and by the U.S. military and non-military accounted for 10 percent of its annual revenue in 1984. Approximately 20 percent of Motorola's 65,000 domestic employees are covered by the Walsh-Healey Act.

COMPRESSED WORKWEEK AND FLEXTIME

Several of those Motorola operations whose employees are not covered by the Walsh-Healey Act have experimented with the following compressed workweek and flextime program.

- Four ten-hour days
- Three twelve-hour days one week and four twelve-hour days on alternating weeks

- Four nine-hour days with a fifth day of four hours

- Two twelve-hour days on weekends to utilize equipment on weekends without requiring the same weekday employees to work additional days.

- Flextime with five-hour core times.

Motorola has a strong participative management culture. The Motorola employees to be affected by each of these programs participated in their development, and all employees involved in the programs opted individually to participate.

Motorola's experience with these compressed workweek and flextime programs have demonstrated the following advantages:

- Widespread approval by employees after participation in such programs

- Numerous requests by other employees, including many covered by The Walsh-Healey Act, to have the option of working compressed workweeks and flextime hours

- Reduced absenteeism

- Improved productivity

- Reduced turnover, resulting in lower employment costs

- Twelve to fifteen percent reductions in energy costs

- Improved utilization of capital equipment

- Aided recruitment (a number of prospective employees applied for jobs at Motorola because of the attractiveness of alternatives to the five-day, eight-hour standard).

These findings demonstrate that Motorola and its employees have derived substantial benefits from those programs which provided work hours and workweek options. In fact, the only disadvantage found by Motorola has been its inability to offer the same opportunities to those employees now covered by the Walsh-Healey Act. This problem has been aggravated by the fact that many Motorola employees covered by the restrictive provisions of Walsh-Healy work in close promiximity to operations not covered by the Act to which Motorola has been able to institute compressed workweek and flextime programs.

As great as the benefits have been for Motorola and its employees from its experimental programs providing alternative work scheduling, the financial disincentives of Walsh-Healey have not allowed Motorola to offer compressed workweeks of flextime programs to its Walsh-Healey employees. To Motorola, Walsh-Healey adds 10 percent to wage costs for covered employees working four, ten-hour days and more than 16 percent to wage costs for employees working two, twelve-hour days.

THE LAW

While employees in the federal executive sector have been granted the option of going to a compressed workweek and flextime schedules (Federal Employees Flexible and Compressed Work Schedule Act, Public Law 95-390), *employees in the private sector under contract to the federal government for goods and services and prohibited by law from altering work schedules from the standard forty-hour, five-day week without incurring overtime penalties. The two laws governing these private sector employees are the Walsh-Healey Act and the Contract Work Hours Standards Act.

The Walsh-Healey Act applies to any contract entered into with any agency of the U.S. Government for the manufacture of equipment in any amount exceeding $10,000 and provides "that no person employed by a contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day ..." without payment of time-and one-half overtime. The Contract Work Hours Standards Act is a related law which applies to federally assisted construction contracts in excess of $2,000 and federal service and supply contracts in excess of $2,500. Unless there is a specific exemption, the overtime provisions of these two laws apply to all federal contractors.

Motorola simply urges Congress to approve the concept of allowing employees performing on federal contracts the same rights to alternative work scheduling as are presently enjoyed by employees of non-federal contracts and federal employees. Such action may be accomplished by striking the language: "without overtime penalties in excess of eight hours in any one day or," from both the Walsh-Healey and Contract Work Hours Standards Act. This change would not in any way affect the Fair Labor Standards Act, which provides that overtime premiums be paid whenever employees work more than forty hours a week. In fact, as virtually all employees performing federal contracts are subject to the Fair Labor Standards Act, the forty-hour workweek and eight-hour day provisions of Walsh-Healey and Contract Work Hours Standards Act have little significance on their own. Employees performing on federal contracts would still receive time-and-one-half pay for a workweek exceeding forty hours if the recommended amendments are adopted.

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*Indeed the federal government is itself one of the leading innovators in the area of compressed workweek and flextime hours. In World of Work Report, January 1980, Daniel Caplan notes that "well over 100,000 federal workers are participating in the government's flextime and compressed workweek experiments.

CONCLUSION

Motorola urges the removal of the disincentive from the Walsh-Healey and Contract Work Hours Standards Acts. This would allow employers and employees performing on government contracts the opportunity to improve their productivity and lifestyle, and allow more efficient use of energy, through the establishment of alternative work hour programs. We assure that, if the penalties contained in current laws are removed, Motorola would continue to pay overtime rates for hours worked beyond the employee's scheduled workday.

Thank you for the opportunity to state our views.

Senator NICKLES. Thank you very much for your comments, Mr. Burge. I appreciate the fact that you flew here in a rush this morning.

Our next panelist is William Russell, vice president of government relations with RCA.

Mr. RUSSELL. Mr. Chairman, I thank you very much. I am appearing here today in my capacity as a vice president for the National Council of Technical Service Industries, and I am accompanied by Dr. George A. Daoust, Jr., who is the executive director of the council.

NCTSI is the major trade association for those companies which provide technical and support services to Government agencies over a broad range of activities, from maintenance of equipment to operation of Job Corps centers to repairing components for gas turbine engines. Consequently, we run into many different types of contractual situations and problems.

I will not belabor a lot of the points that have been so eloquently made by other witnesses thus far. (It is nice to be in a majority for a change!) However, I would like to comment on a couple of things that I think are unique to our member companies experience.

Quite distressing to me is some of the debate that I hear over proposals such as this which challenge the amount of estimated savings. We have heard figures this morning that the Grace Commission has said that this legislation could reduce costs by a billion dollars, and the Congressional Budget Office says maybe it is only $550 million. Some people are apparently taking the attitude that if it is only going to save $550 million, let us not bother. I think that the difference between only $100 million and a billion is academic. $100 million a year is a great deal of money to me, and I would certainly support personally, as well as on behalf of the organization I am representing, any legislation that would produce such a reduction in the deficit that we are all so concerned about today.

I think these advantages to the Government and the taxpayer deserve a great deal of attention and consideration by both Houses of the Congress. In Federal Government agencies, where flextime has been authorized, it has been useful to operate some remote facilities on a 4-day, 10-hour workweek. At a location such as Dugway Proving Ground in Utah, which is remote from any reasonable living accommodations, it is much more convenient for the employees as well as efficient for the Government to run on this revised work schedule. This approach cuts down the long commuting trip to only 4 days a week instead of 5. In a recent case where the Army decided to conduct a comparative cost analysis between performing an activity at Dugway with Federal employees and performing it by contract to determine which was more efficient, an additional problem developed. Contractors bidding on this program had to bid on the basis of paying 32 hours straight time and 8 hours of time-and-a-half per week, a nonproductive increase at 10 percent in direct labor costs, which created an inequity in the cost comparison. In those cases where activities were shown to be more economical by contract, despite that cost disadvantage, the Army and the taxpayers are now paying that additional cost for the workers. This legislation would simply remove that barrier between contract and Government performance of certain functions and would enable us to have a more realistic and equitable cost comparison in the implementation of that program.

We talk about the purpose of labor legislation, such as the Walsh-Healey Act, being to protect workers, but I would like to emphasize that what we are protecting the employees from in many cases is the opportunity to have reduced commuting costs, reduced commuting time, and the opportunity to have an extended weekend. These are things that most employees do not want to be protected from, and I think we should look at it from the standpoint of the extent to which our Government should protect people from hypothetical, unrealistic problems.

I would just like to conclude, Mr. Chairman, by saying that what we are advocating is not legislation that would force anybody to do anything, but simply legislation that would provide a broader range of alternatives for employees and employers to sit down and negotiate to reach the most favorable arrangement for any given circumstances.

I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Russell follows:]

STATEMENT OF

WILLIAM D. RUSSELL, VICE PRESIDENT
NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES

BEFORE

SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

ON

S.1105, FEDERAL CONTRACTOR EMPLOYEES FLEXITIME ACT

JUNE 13, 1985

I am William D. Russell, Vice President of the National Council of Technical Service Industries. I am accompanied by Dr. George A. Daoust, Executive Director of the Council. NCTSI is the major trade association exclusively representing those companies which provide technical and support services to Government agencies. These services cover a broad range of activities, including operation and maintenance of test ranges and air defense systems, maintenance of a wide variety of equipment, base support for military and civil agency installations, operation of Job Corps Centers, and repair of components for gas turbine engines.

I sincerely appreciate the opportunity to be here today and express our support for S. 1105, an act which would amend the Contract Work Hours and Safety Standards Act (40 U.S.C.328(a)) and the Walsh-Healy Public Contracts Act to permit employees on a Government contract to work more than eight hours per day, as long as they work no more than forty hours per week, without a requirement for overtime payment. In our view, this legislation would have significant value to the Government, Government contractors, and to the employees of those contractors.

Advantages to the Government

The major advantage of this proposed legislation to the Government and the taxpayer is the anticipated cost savings in Government operations. The Grace Commission has estimated that the overtime requirements of the Walsh-Healy Public Contracts Act cost the Government between $673 million and $1.3 billion annually. The more conservative Congressional Budget Office has estimated that the reform of outdated labor laws provided by this legislation would result in cost savings of more than $550 million annually. While we may quibble over the amount of savings, as we may with any estimate, it appears that there is general agreement that repeal of this overtime requirement would provide substantial cost savings. At a time when the Congress and the Administration are so gravely concerned over the Federal deficit and budget reduction, it would appear that this advantage, if possible without detriment or injustice to affected employees, should be a compelling argument. Whether the annual savings are as high as $1 billion or as low as $100 million is academic - any significant savings would help to reduce the deficit.

Additional advantages to the Government are implicit in action by the Congress to authorize flexible work schedules for Federal employees, many of whom perform work similar to that performed by Government contractors. For the past three years, under specific authority granted by the Congress, executive agencies and their employees have enjoyed the freedom of alternative work schedules, such as a ten-hour, four-day work week. The results have been so successful that the House of Representatives has approved legislation to make that freedom permanent and, we understand, this august body is favorably considering that legislation, H.R. 1534.

Let us consider a few examples of the many benefits realized in the test of flexible work schedules for Federal employees. Some Government activities are located in remote areas, a hundred miles or more from communities that are suitable for family life. A daily commute over that distance, five times a week, is a considerable hardship and expense for employees. An operational schedule of four ten-hour days reduces commuting time and cost by 20% and allows a three-day weekend for employees every week. This schedule also reduces operating costs for the facility, conserving energy as well as support costs.

In more congested areas, alternate work schedules which reduce the work week ease pollution and traffic problems, with considerable benefit to the local community. This approach also promotes energy conservation, not only for transportation but in heating and cooling buildings which, in many cases, can be shut down for an extra day per week.

Advantages to Contractors

Contrary to some perceptions, Government contractors are strongly motivated to reduce the cost of their contracts. Service contracting, in particular, is a highly competitive business and our members not only compete with other private firms but frequently compete with Government activities which provide commercially available products and services.

As one specific example, Dugway Proving Grounds in Utah is an installation that operates on a four-day week due to its remote location. Federal employees, under specific legislative authority, work four ten-hour days without overtime costs to the Government. When the Army conducted a cost comparison between contract and Government performance of support activities at this base, contractors had to bid on the basis of paying their employees 32 hours of straight time and 8 hours at time and a half per week. This statutory requirement inflated contractor's labor costs by 10%, creating an inequity in the cost comparison process. Since some of these activities were shown to be more economical by contract, despite this cost disadvantage, they were converted to contract performance and the Army (and the taxpayers) are forced to accept this unnecessary cost.

Another example is found in contract operation of Job Corps Centers for the Department of Labor. Residential advisers and counsellors for the Corps members are required to be available at all hours to assist with personal problems and the difficult adjustment to the discipline of Job Corps training. The most efficient use of an advisor's time involves shifts of more than 8 hours, but only 40 hours per week. Initially, the Department of Labor permitted an exemption from the requirements of the Contract Work Hours and Safety Standards Act for these positions, but more recently has concluded that these employees must be covered. This ruling will result in an increased cost for operating Job Corps Centers, at a time when many Members of Congress are working to minimize budget reductions for this program and to preserve the opportunity for disadvantaged youths to become productive members of society.

What we are seeking in supporting this legislation, Mr. Chairman, is the flexibility in utilization of our employees under Government contracts that we have in our commercial business. This amendment to Government contract labor laws would bring it into conformance with the Fair Labor Standards Act, which applies to non-Government work subject to Federal regulation. Enactment of S. 1105 would enable us to apply management efficiencies and personnel policies developed in commercial work to reduce the cost of our Government contracts.

Advantages to Contract Employees

Much has been said about the original purpose of the Contract Work Hours and Safety Standards Act and protecting contract employees. The specific provision that would be changed by this legislation "protects" contract employees from being able to negotiate alternate work schedules that would reduce commuting time and expense, increase free time for leisure activity, and escape peak rush hours of commuter traffic. By its own clear statement, S. 1105 will not affect collective bargaining agreements in effect on the date of its enactment. It will, however, provide a broader range of alternatives to be considered in subsequent collective bargaining negotiations.

From testimony submitted to the Congress in support of flexitime arrangements for Federal employees, from executive agencies, Government employees, and Government employee unions, it has been well-received by the Federal workforce. Passage of S. 1105 would merely extend those benefits to the many thousands of contract employees who perform similar work for their Government.

Again, Mr. Chairman, we appreciate the opportunity to come and testify in support of this very positive legislation. We commend the Chairman and the distinguished Senator from Colorado, Mr. Armstrong, for introducing and actively promoting S. 1105 and we wish you success in this initiative.

If you have any questions concerning the position of NCTSI on this bill, we would be pleased to respond.

Senator NICKLES. Thank you very much.

Mr. Kenny.

Mr. KENNY. Thank you, Senator.

My name is Gerard Kenny with Kenny Construction Co. in Chicago, IL, and I represent the National Utility Contractors Association which is comprised of over 2,000 companies throughout the United States working both in the construction side and the equipment supply side of the wastewater treatment and distribution systems.

We would like to today give you our position, to state that we are unequivocally in favor and overwhelmingly support the Flextime Program that has been proposed for many reasons varying from labor savings, which you have heard about in the testimony earlier today, to specific examples on particular projects that we have been involved in as contractors in the city of Chicago. We were working there down on State Street and Michigan Avenue doing a sewer rehabilitation project. The store owners wanted us out of there by Christmas so we would not interfere with their holiday time. We proposed to the unions and the city of Chicago, which was the owner of the project, that we would work 4 10-hour days, turn them over so they could have 3-day shopping weekends and be done before the Thanksgiving holiday. The city said if you can do that with no additional cost to us, we will go along with that program. The store owners also signed up ecstatically. They could be open for 6 weeks without their sidewalks being torn up and interference in front of them. What occurred was under the current Federal law, because there were Federal grants in the project, we could not do this, and, therefore, we had disruption during their prime sales time which they felt reduced their sales in some cases 50 percent in some of the stores. This is just one of the simple examples that my company itself was involved in.

Just to conclude very quickly, we see what this committee is doing, what they are looking at and it relates a little bit from my age group when I reach back and take a look in traveling through Pennsylvania I ended up in the Amish country, and I saw the one farmer with the mule pulling the plow and furrowing the fields to plant the seeds, and then you drive down 10 miles and there is a big International Harvester combine doing a tremendous more amount of work than what the Amish farmer was doing. What I am saying today to this committee and to you specifically, Mr. Chairman, is to give us a chance to take the harnesses off the mule, let him do what he does best and let us get back to work and use the technology and the time frame and the flexibility we need to accomplish our projects.

Thank you very much.

[The prepared statement of Mr. Kenny follows:]

NATIONAL UTILITY CONTRACTORS ASSOCIATION
(NUCA)

Represented by

Gerard Kenny
Kenny Construction Company
Wheeling, Illinois

Hearings on the
Federal Contractor Employees Flextime Act
(S. 1105)

Senate Labor & Human Resources
Subcommittee on Labor

June 12, 1985
Washington, D.C.

The National Utility Contractors Association
Suite 606, 1235 Jefferson Davis Highway
Arlington, Virginia

Gerard Kenny
Vice President, Kenny Construction Company

Representing the
National Utility Contractors Association

Mr. Chairman and members of the Committee, the National Utility Contractors Association (NUCA) is comprised of 2,000 companies nationwide that specialize in water delivery and wastewater treatment construction projects, particularly underground pipeline work. Our contractor members' companies employ both union and non-union labor and the size of our firms range from small operators with a crew of five workers to major corporations that work in several States and employ hundreds of workers.

As a result of the nature of our work, many of the projects constructed by NUCA members are financed through federal programs. These include the Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Bureau of Reclamation, Farmers Home Administration and others. As a result of our experience in working on federally funded projects and in meeting the requirements imposed by the Walsh-Healey law, I wish to take this opportunity to offer the utility construction industry's views on the statute and your proposal to amend it.

Mr. Chairman, let me say at the outset that this Nation's utility contractors overwhelmingly support your legislation to amend Walsh-Healey. From the testimony presented by others here today, you and members of the committee are, no doubt, well aware of the history of the Walsh-Healey law and the reasons why it was originally implemented. During my brief presentation, I will offer you specific examples of the "hands-on" problems experienced by this Nation's utility contractors in complying with this archaic statute. In preparing my remarks, I requested and received comments from dozens of construction contractors whose personal experiences, including my own, are here summarized.

If I could briefly list the advantages to contractors and, ultimately, to the American taxpayer of amending Walsh-Healey, it would be these: increased productivity at a reduced price -- in other words, more bang for the buck.

The current law limits the flexibility contractors need to rectify the many spontaneous and unique problems that crop up on construction projects. These unforeseen difficulties are particularly prevalent in our underground utility construction industry. In bidding a water or sewer pipeline job, the contractor prepares his cost estimates in anticipation of the site and soil conditions thought to exist underground by the project engineer. Regardless of the expertise of engineers and technological advances in recent years, a project's specifications do not always reflect the conditions we later find to exist underground. Many times a contractor's bid on an underground construction project is little more than a role of the dice.

On more than a handful of projects I have encountered soil conditions far different than those anticipated. The depth of the water table in a particular area is a typical projection that is often miscalculated. The location of other existing underground utilities such as telephone cables, century-old water lines, electric cables and others that must be circumvented by the contractor are other unforseeable and costly problems that occur. These problems not only add unpredictable costs to the project but often threaten public safety unless remedied in a timely manner.

A contractor member of NUCA from Massachusetts recently encountered an unforeseen utility line that required special safety construction to protect the surrounding community. This problem was encountered on the seventh hour of the workday, requiring three additional hours of labor to ensure the public safety. As a result, the contractor was required by the Walsh-Healey law to pay the seven crew members two hours of overtime wages. In this type of situation, an employer's decision could be easily compromised by the additional overtime costs that prudent judgement would otherwise dictate.

This same contractor estimates that because of the labor intensive nature of our work, he projects a savings of 22 percent in his labor costs on typical non-federal work as opposed to those experienced on federally funded projects governed by Walsh-Healey.

Another obvious unknown that exists on most construction projects is the weather. If a contractor has the flexibility to schedule four 10-hour days, he or she can compensate for time lost when a project is shut down during a workweek because of the weather. Inclement conditions recently forced a contractor member of our association from Ohio to cancel work on a Monday. Because of Walsh-Healey restrictions, he only scheduled four 8-hour days the remainder of the week despite the fact that fair weather and Daylight Savings Time were conducive to scheduling four 10-hour workdays to make up for lost time.

He also notes that his employees were particularly unhappy because they were prevented from receiving a full week's wages. This example of weather-related problems is quite typical on many projects. If we could schedule four 10's Monday through Thursday, but weather forced us to shut down on Wednesday, we could resume work on Friday and still log-in a productive 40-hour workweek. The employees would benefit by receiving a full week's worth of wages.

The weather factor is also critical on the many projects that span several months or years in the colder northern and central regions of the country. Our work would be much more productive if we were able to schedule longer hours during the summer months. That same Ohio contractor writes, "It makes absolutely no sense to me for a contractor's workers and equipment to work 8-hour days in good weather, shut down for the remaining daylight hours, and then try to work under the harsh conditions of winter weather."

The productivity of our equipment, some of which costs hundreds of thousands of dollars to purchase and maintain, is also a factor

This high cost of owning and maintaining equipment would be greatly reduced if contractors were allowed to work their equipment in excess of eight hours per day during good weather. In addition to reduced worker productivity during cold weather, winter conditions are very tough on equipment, resulting in increased maintenance and repair costs. In summary, most construction contractors report that worker and equipment productivity in the cold of winter is often half of what can be accomplished in good weather.

Another equipment-related cost is the added start-ups and shut-downs required by working five 8-hour days as opposed to four 10's. A contractor from Utah has told us he has experimented with this factor on non-federally funded projects and reports, "Start-ups and shut-downs take time and, therefore, money. With four starts and stops instead of five, productivity can be improved by 2 percent or more. This means lower costs and lower bids." On a multi-million dollar job, a 2 percent saving to the Treasury can add up quickly.

Perhaps the most important rebuttal to the arguments presented by those opposing amendments to Walsh-Healey is the strong support for four 10-hour days expressed by our employees. Given the nature of our work, many projects are located hours from a contractor's home plant. The work requires employees to commute many hours to and from the jobsite, or the contractor must house them in a motel during the workweek. Obviously, four 10-hour days would reduce travel and lodging expenses by 20 percent -- again, a significant savings to the contractor and, ultimately, the government.

In addition, many of our contractor members report that their employees are clamoring to work four 10-hour days to reduce (in addition to their travel time) child-care costs, time away from their families and their out-of-pocket expenses while away from home. A Florida contractor reports, "Our men work in crews numbering seven to twenty throughout the State. The men on a crew have often requested that they be allowed to work their 40-hour weeks in four days rather than five. Because of the added expense resulting from Walsh-Healey, we've usually had to deny these employee requests."

We also find absenteeism and tardiness more prevalent on federal projects. If federal contractors were permitted to schedule four 10-hour days Monday through Thursday, employees could schedule doctor, dentist and other personal appointments for their free day on Friday. My experience has shown a marked improvement in absenteeism rates on non-federal projects where four 10-hour days are scheduled.

It is important to note that amending Walsh-Healey to permit four 10-hour workdays would in no way interfere with voluntary collective bargaining for overtime provisions in excess of the forty hours per workweek now required by the Walsh-Healey Act, the Contract Work Hours & Safety Standards Act and the Fair Labor Standards Act. Utility contractors have no qualms about paying overtime for all time worked in excess of forty hours per week. All we are asking is that Congress permit contractors and their employees building federally financed projects some of the same rights to a more flexible workweek schedule as those currently enjoyed by employees on non-federal projects and employees of the federal government.

Having built many federal and non-federal projects over the past several decades, it has been my company's experience that we are much better able to complete the projects on-time and on-budget if given the flexibility offered by the four 10-hour day workweek. The increased productivity resulting from this flexibility adds up to savings for the contractor that would ultimately be passed on to the federal Treasury.

The market for federal construction work is highly competitive. The number of companies bidding for a single project often reaches as high as 30 contractors or more. Given this keen competition, contractors cut their costs to the bone in an effort to be low bidder on a job. There is no question in my mind that amending Walsh-Healey would lead to lower contractor bids, less costly projects and an ultimate cost savings to the federal government.

In the opinion of the National Utility Contractors Association, it only makes good common sense to amend the Walsh-Healey law. We respectfully urge members of this panel and the entire Congress to act favorably on S. 1105, the Federal Contractors Employees FlexTime Act.

Senator Nickles. Thank you very much, Mr. Kenny.

Mr. Burge, I am impressed by your statement with regard to the cooperative venture and how you set it up with your employees as far as flextime or compressed weeks and so on. Has that been very favorably received? I would think it would be with your employees.

Mr. Burge. We have operated in different communities. In all cases we go to the employees to discuss proposed changes and we hear them out to understand their point of view. In some communities leisure time on the weekend is of prime importance. In other cases a 4-day workweek is more attractive and where we can accommodate, we have been able to do that. But in the Government contract business we incur additional costs.

Senator Nickles. You mentioned 8 or 10 percent of your sales were Government related.

Mr. Burge. Yes.

Senator Nickles. Do you still have the compressed workweek when you are doing Government business or do you just opt out in that area? If you do have it, do you pass that cost on to the taxpayer?

Mr. Burge. If we do have it, it goes into the additional costs we incur and it is passed on.

Senator Nickles. Do you think if we are able to basically adopt the Fair Labor Standards Act that the costs to the Government for DOD, avionics, or whatever the Government would be purchasing from you could be lower?

Mr. Burge. I am convinced we are incurring an unnecessary cost. The flexibility of the workweek is enough advantage in the eyes of our employees and the premium paid for overtime is not necessarily a requirement as an incentive.

Senator Nickles. Mr. Russell, you made a comment that I think was very well stated. You mentioned the cost in savings to taxpayers. The estimates we have from the Grace Commission are $600 million to $1 billion and CBO came up with a couple billion over the next 3 years. We are talking big bucks. But you are also talking about the savings which are not calculated incidentally. Those are savings to the taxpayers. But you also have taxpayers who are getting into that car and driving to work, and in some cases for construction projects or others they are driving a considerable amount of time where in Chicago, IL, they may be commuting an hour both ways. You have a lot of costs that are incurred by taxpayers that do not show up in any of these projections. You also have costs that are, again, not computed by CBO or the Grace Commission or anybody else, that are incurred when you start talking about people deciding, well, it is not worth it, I am not going to bid. The printers said they will not bid on this project, it is too much of a hassle. You have the costs Mr. Kenny mentioned because somebody lost some sales because of this project, or the fact that the project was not completed on time or it was strung out for *X* period of time.

There are many hidden dollars that cost the economy which just do not show up in anybody's statistical analysis and probably could not. You would have to spend more time than it would be worth to come up with those estimates, but they are real costs.

Mr. **Russell**. When someone challenges your estimate and you have exaggerated, therefore, your whole idea is considered useless.

Senator **Nickles**. I would concur with your statement. We ought to make those statements.

Mr. Kenny, how many people do you have working in your construction business?

Mr. **Kenny**. In my particular company we have about a thousand.

Senator **Nickles**. About 1,000?

Mr. **Kenny**. Yes, sir.

Senator **Nickles**. You mentioned this one project. They got together and decided they would like to work 10's.

Mr. **Kenny**. Yes, sir.

Senator **Nickles**. So your employees were all in favor of it?

Mr. **Kenny**. Yes, sir.

Senator **Nickles**. Yet the Federal law basically, which was going to mandate the overtime premium, would increase your labor rate 10 percent. The municipality could not pay that extra 10 percent and therefore they were denied the opportunity which they wanted?

Mr. **Kenny**. That is correct. If you take a look at the calendar, not this year but in 1986, you take a look at the 4th of July and I think it falls on a Friday and it is a mandated Federal holiday. Most of the men would like to still get a 40-hour paycheck that week and so with the possibility of this change taking effect, we could work four 10's, get a full week in, turn over possibly a street or sidewalk or sewer project back over to the owner or just let the men work the 40 hours. Now they are only going to be able to work the 4 days, four 8's, 32 hours and go home short when they need the money in the summertime.

Senator **Nickles**. Is not the 4th of July a paid holiday for you?

Mr. **Kenny**. No, sir, it is not.

Senator **Nickles**. To all of our panelists, did you have any additional colloquy?

[No response.]

[Additional material supplied for the record follows:]

STATEMENT

National Association of Manufacturers
on S. 1105
The Federal Contractor Employees Flexitime Act
before the
Subcommittee on Labor
Committee on Labor & Human Resources
United States Senate
June 13, 1985

The National Association of Manufacturers is a voluntary business organization of more than 13,500 corporations, large and small, located in every state. Members range in size from the very large to more than 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85% of all workers in manufacturing and produce over 80% of the Nation's manufactured goods. Through its National Industrial Council and Associations' Department, the NAM is affiliated with an additional 158,000 employers.

NAM wishes to express its appreciation for the opportunity to testify in support of S. 1105, the Federal Contractor Employees Flexitime Act. At the same time, to commend the sponsors of this important legislation. S. 1105 would eliminate the current dual standards with respect to overtime pay -- one for employees of federal contractors and another for all other employees in the private and federal sectors.

Currently, employers and employees engaged in federal contracts are effectively prohibited from utilizing non-traditional work schedules such as compressed workweeks, that is, workweeks of fewer than five days. Under the Walsh-Healey Act and Contract Work Hours and Safety Standards Act, federal contractors are required to compensate their employees at time-and-one-half overtime for all "work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week." Other private sector employers and federal agencies are required to pay overtime only when hours exceed 40 per week and 80 per two weeks, respectively.

Elimination of the daily overtime provision is, we believe, warranted both from the standpoints of equity and savings that would be realized in federal procurements. If enacted, this measure would provide a single standard for the payment of overtime, applicable to all sectors, so that all employees might enjoy the same opportunities in workweek scheduling.

The statutes governing employment practices of federal contractors, such as those relating to wages and hours, are frequently more restrictive than those applying to others in the private and federal sectors. For example, the Fair Labor Standards Act (FLSA), the wage and hour statute which applies to all employees, mandates overtime for hours worked in excess of 40 per week, without regard to daily hours. However, federal contractors and their employees are subject also to the Walsh-Healey Act and Contract Work Hours and Safety Standards Act which mandate overtime for all hours worked beyond 40 per week and eight per day. The Walsh-Healey Act applies to contracts in excess of $10,000 while the Contract Work Hours Act applies to federal construction projects over $2,000, service contracts in excess of $2,500, and supply contracts between $2,500 and $10,000.

The present dual standard denies federal contractors and their employees the demonstrated benefits, e.g., increased productivity and enhanced employee morale, that have been achieved by others through use of compressed workweeks. In view of recent polls which cite the federal deficit as the number one issue of national concern, perhaps the more compelling reason for this long overdue change is that the current dual standard also denies the government and taxpayer substantial savings in federal procurements that would be realized were daily overtime not required.

The concept of overtime had its origin in the post-depression era of the 1930s when high unemployment was a pervasive national problem. Some historians suggest that the Walsh-Healey and Fair Labor Standards Acts were a response to a Supreme Court ruling in 1936 that the National Industrial Recovery Act, a 1933 statute providing standards for wages, hours and working conditions, was unconstitutional. The Walsh-Healey Act was passed that same year. While the statute was intended to address a number of issues, among them were the desire:

> "... to establish standards in the administration of contracts for government work; to establish the federal government as a 'model' employer; to increase the purchasing power of labor; to protect employees from outright exploitation and to protect fair-minded employers from unfair competition; and to spread the available work, limiting overtime and reducing the hours of the standard workday."

Significantly, beyond the reasonable need for guidelines for contracts administration, Walsh-Healey's objectives were to establish a shorter workday and workweek, which at the time were significantly longer than is currently the case. Ironically, FLSA evolved from the same conditions and was enacted three years later, but it did not incorporate a daily cap for hours worked. Walsh-Healey's daily overtime provision was adopted in 1962 as part of the Contract Work Hours and Safety Standards Act.

Interest in compressed workweeks has grown steadily during the last decade as employers seek to respond to the needs of a changing workforce, to increase productivity, and to enhance resource utilization. The Bureau of the Census reported that in 1980, about 7.6 million workers, or about 12% of the full-time, non-farm workforce, were on flexible work schedules with varied starting times. The report also noted that 1.9 million workers were on compressed workweek schedules of 4-1/2 days or less -- an increase of nearly 60% since 1973. According to Bureau projections, over one-third of the non-farm workforce will be involved in compressed, flexible and other alternative work schedules by the end of the decade.

There are a number of factors leading to the increasing popularity in compressed workweeks. From the employee's perspective, there are reduced expenses for meals and commuting, etc., increased time for leisure, recreation and the family, and greater convenience for dealing with personal matters. In addition, with increasing numbers of two wage-earner families and single heads of households, reduced child-care expense is also a major consideration. Employee satisfaction manifests itself in lower rates of tardiness, absenteeism and turnover, all of which contribute to increased productivity.

Productivity is also enhanced by more effective use of capital equipment, higher weekly output due to reduced startup/shutdown time, and reduced energy requirements. Also, reports indicate that worker safety in facilities using compressed workweeks improves, due perhaps in part to less frequent start-up and shut-downs which are often among the most hazardous facets of a plant's operations.

Benefits would accrue to the federal government through savings arising from increased competition and reduced labor costs due to increased productivity. NAM member companies using compressed workweeks have indicated that they would consider bidding on federal contracts were it not for Walsh-Healey's daily overtime requirements. All other things being equal, federal contractors currently using compresseds workweek would experience a 10% reduction in their labor costs. These savings could be enjoyed by the federal government and, ultimately, the taxpayer as well.

As an example of the potential cost-savings from use of compressed workweeks, the Congressional Budget Office (CBO) estimated in 1983 that elimination of the daily overtime provision would lead to annual savings of $550 million. Last year, the Grace Commission reported such a change would contribute to three-year savings of as much as $3.37 billion in federal procurements.

More current figures were cited recently, Mr. Chairman, during debate on your amendment to S.Con.Res. 32, the First Budget Resolution. We appreciate very much your introduction of that measure which expressed a sense of the Senate that the daily overtime provisions of the Walsh-Healey and Contract Work Hours Acts be eliminated. CBO estimates offered at that time projected three year savings in budget authority of $1.9 billion and $1 billion in budget outlay. We sincerely hope that the support for your amendment, which passed by a wide margin of 86 to 5, was a true expression of the Senate's resolve to chip away at a runaway deficit. This reduction in the government's cost of operation, taken together with other measures, can make a significant contribution to moderating a serious problem. Further, we hope that those members who joined you in passing this amendment will lend their support to enactment of S. 1105 to end the disparate treatment presently accorded federal contractors and their employees. Again, NAM wants to emphasize that only this group of employers and employees is subject to the requirement for daily overtime.

In view of the foregoing, there would seem to be little standing in the way of S. 1105's enactment. The benefits accruing to employers and employees alike from use of compressed workweeks have been demonstrated, as have the savings in goverment procurements. These considerations, together with the issue of equity and the fact that this bill would simply bring the statutes governing wage and hour practices of federal contractors into conformance with

FLSA, would lead the casual observer logically to the conclusion that S. 1105 should pass with little debate.

But history tells us such is not the case. This issue should be one of eliminating a provision of law which at the time of its passage nearly 50 years ago had merit but not is an an anachronism -- of responding to the desires of a changing workforce by providing all employees with the same options and benefits — and providing a means to enhance productivity and reducing government expenditures. Unfortunately and mistakenly, debate on elimination of the daily overtime requirement -- a question of equity and cost-savings -- has become a labor-management issue in which the lines are sharply divided.

It appears that the mandated 8-hour daily cap has become a "sacred cow" to at least some factions of organized labor. Publicly, opponents of this measure argue that elimination of daily overtime requirements would "nullify the eight-hour standard and establish a ten hour day", "affect adversely" employees engaged in government contracts and "sabotage a number of job-related health standards." These expressed reasons for opposition mask, NAM believes, the more likely institutional one: a perception of losing a battle.

In the first instance, there is no "standard" work day. Certainly, conditions today are vastly different than those of a half century ago just as are the imperatives facing business and government. Further, the "model" employer itself -- the federal government -- now has the option, as do those in the private sector not engaged in federal contracts, of utilizing compressed workweeks. Finally, were 8-hours the standard, one logically wonders why a daily overtime provision was not incorporated in FLSA.

It is difficult to understand the logic in the suggestion that elimination of the daily overtime requirement would adversely affect employees of government contractors since S. 1105 would simply confer on such employees the same benefits and options currently enjoyed by their counterparts. Similarly difficult to understand is the suggestion that employers with collective bargaining agreements could not compete effectively with "unscrupulous employers who would impose ten-hour work days on their employers." Rather than being concerned about adverse effects on employees of federal contractors, opponents of this and other similar measures they are more interested in having the government mandate overtime as opposed to their having to collectively bargain for it.

Finally, there is simply no basis for the suggestion that extended daily work hours would present additional worker hazards. Since the number of start-up/shutdowns — generally the most hazardous operations — would be reduced, so too would the potential for exposure to hazards and injury. Opponents argue that extended hours would lead to increased risk due to occupational exposure to health hazards. By definition, however, this is simply not true. Permissable exposure levels (PEL), such as those contained in the Occupational Safety and Health Administration's health standards, are time-weighted averages (TWA) that define the level to which an individual may be exposed without suffering any adverse health effects. Traditionally, they have been stated as a function of an eight-hour day, 40 hour workweek. This is not, however, on the basis of any health consideration. Rather, it is a convention adopted in the past by health professionals as representative of the normal workday/workweek. PEL's are easily converted to reflect the actual length of exposure during the workweek, be it 6, 10, or 12 hours a day spread over 3, 4 or 5 days, without posing any increased risk to the employee. We would note that the National Institute for Occupational Safety and Health, which prepares recommendations concerning exposure levels for OSHA has considered stating PEL's in terms of 10-hour TWA's.

Beyond these arguments, the more likely reason for opposition by some factions of organized labor appears to be that enactment of S. 1105 might be perceived as a loss. Division on this issue is suggested by the list of labor agreements in the construction industry which provide for compressed work schedules that was offered during debate on on your amendment to the First Budget Resolution. Perhaps a better illustration of the lack of a rational argument against S. 1105 occurred in 1982, when Congress was considering S. 2240, "The Federal Employees Flexible and Compressed Work Schedules Act".

S. 2240 authorized federal agencies to utilize compressed and other workweek schedules without paying daily overtime and was based on positive experience during a three-year experimental program. During Senate debate on this bill, Sen. Armstrong offered an amendment that would have eliminated Walsh-Healey's daily overtime requirements and given federal contractors and their employees with the same flexibility in workweek scheduling. Organized labor supported compressed workweeks for federal employees but opposed them for federal contractors. This irony is best illustrated in a June 29, 1982 telegram to all Senators from Ken Blaylock, President of the American Federation of Government Employees, just before consideration of S. 2240, which stated in part:

> I urge you to vote no on the Armstrong amendment ... Adoption of this amendment would destroy the protection provided for private sector workers under the Walsh-Healey Act and also jeopardize passage of this legislation [S 2240] which continues and expands the authority for the use of alternative work schedules [which] have proven ... to be successful in improving agency productivity and Federal employee morale." (Congressional Record, 6/29/82, p. S7650)

Mr. Blaylock's telegram contained no reason for opposing Walsh-Healey reform and as noted earlier, there are no protections for employees of federal contractors that would have been diminished by such a reform. Nor was there any explanation of why such an amendment should not be made given that the "model employer" itself was intending to employ compressed workweeks.

As noted in the foregoing, there are many benefits that may be realized through use of compressed workweeks, benefits that accrue to the employer and employee alike. Enactment of S. 1105 would give employers and employees engaged in federal contracts the option to take advantage of these same benefits.

We do not envision that all federal contractors would choose this option. Compressed workweeks may not be suited to a particular application. Further, such work schedules are not a panacea; they are simply a tool which in certain instances may better respond to the desires of the employees and while at the same time, contribute to success of the enterprise.

NAM believes deliberations on S. 1105 should focus on one question: "Should Congress continue to perpetuate a provision which singles out one group of employers and employees and precludes them from the opportunity to exercise the compressed workweek option, if desired?" We think not.

Accordingly, Mr. Chairman, we hope the Subcommittee favorably reports S. 1105 at the earliest date so that we may proceed toward its enactment.

Again, we thank you for the opportunity to share our thoughts on this measure and offer our assistance in making this long overdue change a reality.

STATEMENT OF HOWARD V. KNICELY
VICE PRESIDENT, HUMAN RELATIONS
TRW INC.

On Behalf of

TRW INC.
Before the Subcommittee on Labor
Committe on Labor and Human Resources
United States Senate

June 13, 1985

IMPACT OF WALSH-HEALEY ACT
STATEMENT OF
HOWARD V. KNICELY
VICE PRESIDENT, HUMAN RELATIONS
TRW INC.

TRW appreciates the opportunity to describe some of its experiences under the Walsh-Healey Act as well as to provide its recommendations concerning modification of the statutory provisions.

TRW is a diversified organization engaged in a variety of government and commercial product lines. TRW acts as a prime government contractor and subcontractor, primarily within its Electronics and Defense Sector. Many of TRW's commercial product lines, including electronic components and automotive parts, also are incorporated into products ultimately purchased by the government.

The defense business segments suffer directly from the adverse impact of the Walsh-Healey Act. The Act also negatively impacts some of our commercial operations where the defense business is mixed with commercial.

1. Definitional Problems

The principal problem with the Act is the requirement for overtime payments for all hours worked in excess of eight hours in any one day. However, determining application of that requirement is not simple. The provision applies only to employees who are involved in the manufacture, fabrication, assembling, handling, supervision or shipment of supplies to the government.

Thus, the employer must ascertain which employees are and are not involved in government business. In plants and divisions primarily involved in government contracting, all employees involved in the manufacturing process will generally be covered. In some product lines, however, the determination is significantly more complex, because of the mix of commercial and government production.

In order to maintain consistent treatment of employees, employers will wish to avoid divisive classifications. The employer is then faced with the dilemma of choosing whether to eliminate daily overtime or to extend daily overtime pay to non-covered employees. The first alternative may create problems in meeting production requirements and the second alternative may create competitive problems. The second alternative levies unwarranted and possibly unintended costs on the employer and, indirectly, on the government through increased overhead expense. Further, the pay administration system may lack the capacity to distinguish covered from non-covered employees, eliminating even the possibility of paying covered employees on a different basis.

2. Unintended Consequences

The Act may actually have greater unintended than intended consequences. The Act has little practical impact on employees working a traditional 5-day, 40-hour workweek. The reason is that an employee who works in excess of 8 hours on a given workday or workdays is very likely to also be working in excess of a full regular workweek schedule. Thus, even in the absence of Walsh-Healey, the hours in excess of 40 in the workweek would qualify for the overtime premium under the Fair Labor Standards Act.

The principal impact of the Walsh-Healey Act, then, is on innovative workweek arrangements. The Act impedes implementation of 4-day, 40-hour workweeks (4/40) and 3-day, 36-hour workweeks (3/36). Less commonly recognized, though, is the impact on innovative arrangements used to reduce layoffs. A company which attempts to reduce the workweek rather than lay off employees is faced with the prospect of paying overtime hours to employees who work over eight hours on the three or four days when they are present. This prospect may preclude the employer from entering into work-sharing arrangements that would benefit both employees and society.

Thus, Walsh-Healey impacts principally the non-standard, non-traditional workweek schedules and work-sharing arrangements.

3. Department of Labor Administration

The Department of Labor has created even greater complexities. The Department has allowed employers to utilize a wage-reduction formula to reduce the basic hourly wage rate of Walsh-Healey covered employees converting to a 4/40 work schedule from a 5/40 work schedule. The wage reduction formula results in the employees' new hourly rate under 4/40 being 90.9% of the employees hourly rate under the 5/40 work schedule. The total weekly pay of an employee working 40 hours in both cases is almost exactly equal, given application of overtime at 1-1/2 times the new base hourly rate for the ninth and tenth daily hours in the 4/40 situation. Hours beyond 40 in the 4/40 situation are paid at 1.65 times the reduced base hourly rate in order to be equivalent to hours beyond 40 in the 5/40 situation.

For all but employers paying at or near the minimum wage, the wage reduction system can effectively nullify the daily overtime requirement. Unfortunately, the process is not uniformly applied, since it is not well disseminated within the Wage-Hour Division and is not well known in the employer community.

A further problem with the wage reduction system is the unintended adverse result to employee benefits which use the base hourly rate as a reference for determining benefits levels. Although benefits levels at TRW generally are no longer determined by base hourly pay rates, it is likely that many smaller employers maintain benefits, e.g. insurance, with this feature. A reduced base hourly rate thus adversely affects employees' levels of benefits coverage.

Repealing the daily overtime requirement of Walsh-Healey would relieve employers of the economic pressure to use the wage reduction system, would remove the unintended potential consequences to impact employee benefits, and would reduce regulatory and administrative burdens on both government and industry.

4. State Overtime Requirements

It should be noted that some states, including California, have enacted separate, sometimes overlapping, daily overtime requirements. California's rule generally provides for 1-1/2 times the daily rate for the ninth through twelfth hours in a day and twice the daily rate for hours in excess of twelve. There is an exception for 4/40 workweeks under certain circumstances. The exception is available to the employer only with approval of two-thirds of the affected workforce. Regardless of the desires of the affected employees, however, this exception is unavailable to Walsh-Healey covered employees even though allowed under state law.

Obviously, in this situation, both employer and employee suffer from being denied access to the state-granted exception provisions.

5. Recommendations

Ample protection for employees is provided by the Fair Labor Standards Act. Consequently, repeal of the existing daily overtime requirement of Walsh-Healey is desirable.

Repeal will achieve enhanced ability to: (a) respond to government initiatives to control costs, (b) respond to employee scheduling preferences, (c) develop flexible scheduling to help meet competition for talent with commercial enterprises not governed by Walsh-Healey, (d) develop innovative options to the traditional 5-day, 40-hour workweek, (e) facilitate the development of work-sharing programs, and (f) reduce regulatory and administrative burdens on both industry and government.

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STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS TO THE LABOR SUBCOMMITTEE OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES IN OPPOSITION TO S. 1105, THE FEDERAL CONTRACTOR EMPLOYEES FLEXTIME ACT

July 3, 1985

The AFL-CIO submits this statement to express its vigorous opposition to S. 1105 which would take from employees of federal contractors the right they have long enjoyed not to be compelled to work more than an eight-hour day.

The eight-hour day was mandated by Congress almost 90 years ago. It was adopted as an humanitarian measure, to protect employees of federal contractors from the burdens — and the hazards — associated with excessively long working hours.

Nothing that has occurred in the ensuing 90 years has made those considerations any less compelling than they were in 1892. To the contrary, we know far more today than was known in the past about the occupational hazards to which many workers are exposed, hazards that increase, often geometrically, as exposure time increases; indeed, most current regulations establishing occupational exposure limits were formulated on the assumption that workers would not be exposed to the hazards in question for more than eight hours at a time.

We also know far more than was understood century ago about the psychological burdens of requiring workers to work excessive hours. An individual who regularly works a 10-hour day will have less energy to devote to participation in the affairs of the community through social, political, fraternal and religious organizations. And workers on long or unusual shifts become socially isolated as well.

It is also far clearer today, than it was years ago, that limiting the number of hours an individual can be required to work without receiving overtime pay encourages the creation of additional jobs. With the civilian unemployment rate stuck at 7.3%, with 8,400,000 individuals out of work, and with 3,300,000 more individuals either underemployed or no longer in the labor market, job creation is a national imperative.

Eliminating the daily overtime premium for work over eight hours per day is thus a step in precisely the wrong direction.

Some have suggested that S. 1105 is intended to meet the desires of employees of federal contractors by affording them the option of working a four-day, ten-hour workweek. Let there be no mistake, it is the federal contractors — not their employees — who want to eliminate the eight-hour day. What workers want and the nation needs is a shorter work week.

If the authors of S. 1105 were truly interested in providing options and flexibility to *employees*, it would be simple enough to draft a bill which permitted workers either individually, or through majority vote, to decide whether they wish to work extended workdays without overtime pay. But that is not what S. 1105 purports to do. This bill would allow employers to decide *unilaterally* (unless there is a bargaining representative) whether to require workers to work more than eight hours per day. The "flex" in this "flextime" bill means flexibility for employers, not workers.

The reasons employers seek this flexibility is clear: they wish to save money at the expense of their employees. Under current law, an employer who requires his employees to work a 10-hour, 4-day week must pay overtime for two hours per day, four days per week; at the overtime premium of 50%, this amounts to an extra four hours pay for the employees — a 10% premium. (This figure while a convenient *approximation*, in fact overstates the cost to the employer. The added overtime compensation does not increase the cost to the employer of most employer-provided fringe benefits, and thus the overtime premium actually amounts to less than 7% in increased labor costs, and, of course, a far smaller increase in total production costs.)

This small increased cost of the eight-hour day is a cost well-worthy paying in order to protect the physical and mental health of workers and to encourage the spreading of work to more able-bodied individuals. That was the judgment Congress made in 1892.

There is no reason for Congress today to turn its back on that judgment and on the accumulated wisdom that has developed since that time.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

ALBERT D. BOURLAND
VICE PRESIDENT
CONGRESSIONAL RELATIONS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5600

June 28, 1985

The Honorable Don Nickles
Chairman, Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Chamber of Commerce, I wish to offer this statement in support of S. 1105, The Federal Contractor Employees Flexitime Act.

The Chamber is the world's largest federation of companies, chambers of commerce, and trade and professional associations. Many of our members provide a variety of goods and services to the federal government. However, many have been deterred from doing business with the government because of the myriad of laws affecting government contracting.

For the benefit of our economy, the nation continues to promote improved productivity, energy conservation and the reduction of unnecessary federal laws. S. 1105, which amends the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act, would further these objectives by eliminating the dual standards that were created by the passage of these laws.

The Walsh-Healey Act and the Contract Work Hours and Safety Standards Act single out federal contractors supplying goods and services to the federal government for disparate treatment regarding overtime pay. Specifically, they effectively deny federal contractor employers and employees the availability of compressed and flexible work schedules. In the public and private sector overtime pay is required only for hours worked in excess of 40 per week. However, federal contractors must pay daily overtime premiums for hours worked in excess of eight per day.

While there are some situations where the standard eight-hour day is preferable, a compressed work week or more flexible work hours enable employers to be more responsive to their employees' needs while still remaining competitive in the marketplace. Studies indicate that flexible work hours:

- Improve employee moral and attendance;
- Increase productivity;
- Reduce energy consumption;

- Permit better use of transportation and recreational facilities; and

- Create additional job opportunities.

It is unfair to exclude from government contracting opportunities those companies which have been, and continue to be, responsive to their employees' needs. Until the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act are amended, it is unlikely that these companies will bid for government contracts, thus inhibiting the potential for increased competition in the federal marketplace.

Further, the Congressional Budget Office has estimated that reform of the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act will result in significant cost savings. At a time when Congress particularly is concerned with the federal deficit, this bill presents an opportunity for reducing federal spending.

Parenthetically, it is important to note that when the Senate passed its version of the fiscal 1986 Defense authorization bill (S. 1160), it included a provision which similarly reforms these laws for military programs.

In conclusion, work hours should be agreed upon by management and labor. Current federal laws prohibit this critical and necessary working relationship from taking place between federal contractors and their employees. The Chamber urges removal of the eight-hour per day restriction on federal contractors. Employers and employees then would have the option of establishing work hours which would be acceptable to the employees, economically advantageous to the employer and would bring federal contractors' overtime requirements in line with the Fair Labor Standards Act.

We respectfully request you to include our comments in the hearing record. Thank you for the opportunity to present our views.

Sincerely,

A D Bourland

Albert D. Bourland

cc: Subcommittee members
Charles Carrol, Majority Co-Counsel
Joel Johnson, Minority staff

National Association of Home Builders
15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0400 (800) 368-5242

John J. Koelemij
1985 President

JUN 21 [illegible]

June 20, 1985

The Honorable Don Nickles
Chairman
Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Members of the Subcommittee:

On behalf of the more than 133,000 members of the National Association of Home Builders (NAHB), I would like to respectfully request that this statement be included as part of the Subcommittee hearing record regarding S.1105, the Federal Contractor Employees Flexitime Act.

NAHB strongly supports S.1105, a bill that would amend the Walsh-Healy Act and the Contract Work Hours and Safety Standards Act to permit employees of federal contractors to work any combination of hours in a 40 hour week.

Currently the Fair Labor Standards Act requires private sector employers and federal agencies to pay overtime to employees after forty hours of work each week. Federal contractors, on the other hand, are required to abide by the Walsh-Healy and Contract Work Hours and Safety Standards Act rules and pay employees overtime after eight hours a day and forty hours a week. The eight hour restriction prevents federal contractors from utilizing a flexible work week schedule, such as four ten hour days, when this type of alternate work schedule is desirable for the contractor as well as the employees and the United States Government.

In the construction and housing industries, a compressed, four day work week has become a widely accepted practice for both union and non-union contractors. Employees like and request the opportunity to enjoy a three day weekend and it has lead to greater employee satisfaction and productivity. Additionally, when construction workers must travel long distances to a construction project, a four day work week allows them more time to spend with their families and reduces traveling costs.

A flexible work week can result in better scheduling and cost savings for the contractor. It is very common in the construction industry for a project to be temporarily closed due to inclement weather. A four day work schedule would give the contractor the ability to make up for time lost because of weather by using Friday as a make-up day. Construction schedules would then be maintained, workers would still receive their full weeks' pay and projects could be completed within the budget. Overall efficiency and satisfaction is gained by utilizing flexible work schedules and the United States Government does not end up paying higher construction costs.

The eight hour restrictions are clearly outdated, unproductive and often costly. Congress has already recognized the value of flexible work schedules by enacting the Federal Employees Flexible and Congressional Work Schedule Act. Employees working for the federal government are permitted to work four 10-hour days per week. Federal contractors are now the only employers saddled with the eight hour restriction. Fairness now demands adopting a uniform overtime standard for all employees as set forth by the Fair Labor Standards Act.

S.1105 allows federal contractors the option of using alternate work schedules. The benefits to be gained by the legislation through greater efficiency, productivity, improved employee morale, and maintenance of construction schedules and are enormous. In addition, as estimated by the Congressional Budget Office, reform of this nature could reduce the federal budget deficit by nearly $2 billion over three years. When all of these positive benefits accrue from the enactment of S.1105, it is essential that Congress move quickly to approve this legislation.

Sincerely,

John J. Koelemij

John J. Koelemij
President

RMA
RUBBER MANUFACTURERS ASSOCIATION
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June 21, 1985

The Honorable Don Nickles
Chairman, Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Chairman Nickles:

The Rubber Manufacturers Association sincerely appreciates the opportunity to comment in favor of S.1105, the "Federal Contractor Employees Flexitime Act," and asks that our comments be made a part of the record of hearings recently held on this legislation.

The Rubber Manufacturers Association is the main representative of the tire and rubber products manufacturing industry, and its nearly 200 members manufacture over 40,000 different products. A substantial number of our members are government contractors and are directly affected by the Walsh-Healey Act or the Contract Work Hour and Safety Standards Act.

The basic change proposed in S.1105 is to eliminate the present requirement that government contractors pay daily overtime at time and one-half after eight hours, and instead require them to observe the Fair Labor Standards Act requirement of weekly overtime after 40 hours. This change would be welcome and desirable in the rubber industry as it would allow companies and their employees to utilize more flexibility in designing work schedules, the same flexibility now available to the federal government and to private sector employers who are not government contractors.

Our industry is facing severe pressures from many directions including increasing imports, including new auto imports, severe downturns in non-auto markets such as mining, and slow growing markets because of major product durability improvements. To combat these influences, companies are utilizing a variety of methods to improve productivity and efficiency to remain strong and competitive.

Flexible work scheduling is one of the techniques being increasingly employed in this effort. To achieve more efficient use of our investment in plant and equipment, many companies are utilizing continuous operation scheduling, employing a variety of work schedules. In many of these schedules employees may regularly be scheduled to work more than eight hours in a day, but not more

The Honorable Don Nickles
Chairman, Subcommittee on Labor
United States Senate

June 21, 1985

than 40 hours in a work week.

Under current Walsh-Healey requirements additional expense is incurred on federal contracts to ensure Walsh-Healey compliance. This increases the cost of goods to the federal government, as well as imposes unneeded complexity in scheduling.

Benefits of S.1105 are clear. In an industry such as the rubber industry, the best method of securing job security is to keep present plants productive, efficient and competitive. Our companies are working hard with their employees to achieve this goal, and a major tool is more effective work scheduling. The current Walsh-Healey overtime requirements complicate this effort greatly. For this reason alone, we believe enactment of S.1105 would be desirable.

But there are other advantages. Other forms of work scheduling are being used in industry and business. These include the four day, 10 hour per day schedule, and flexitime, where employees have some freedom to set their own hours. In these schedules, advantages accrue to both employer and employee. Employees enjoy greater leisure time, lower employment expenses and greater control over their own work schedules, while employers may enjoy reduced energy costs, improved morale, and more efficient plant utilization.

For all these reasons, we urge favorable action on S.1105.

Sincerely,

John R. Serumgard
Vice President, Industrial Relations
and Treasurer

Electronic Industries Association

Position Statement for the Record on
S.1105
The Federal Contractor Employee Flextime Act

The Electronic Industries Association (EIA) appreciates the opportunity to submit this statement in favor of S.1105 to amend the Walsh-Healey Act and the Contract Work Hours Act.

EIA is the major national trade organization representing over 1000 manufacturers of electronics; producing electronic components, equipment and systems for consumer, industrial and government applications. Many of our members are engaged in federal government contracting. U.S. factory sales of electronic equipment, systems and components totaled $172.5 billion in 1984. An estimated 1,810,000 persons were employed in electronics manufacturing and related activities in 1984.

Industry's work force requirements as well as employees' work needs have changed considerably since Walsh-Healey was passed in 1936. Today, the Walsh-Healey and Contract Work Hours Acts constitute an unnecessary barrier to industry's ability to be responsive to those requirements and needs. The overtime provisions in the Acts require time and one half pay for work over eight hours in any one day. Although these provisions do not prohibit the use of flexible work schedules, they do, however, effectively foreclose that option for private companies which contract with the federal government for suplies, services or construction. The reason being that the time and one half rate would have to be paid for the extra hours each day. In effect, employers are penalized for departing from the forty hour, five day work week. This penalty represents a serious competitive disadvantage for many of EIA's member comapneies. S.1105 would ameliorate this problem.

There are many flexible work schedules in addition to the 4 day work week which have proven to be very successful among our member companies. For example, some companies have scheduled a four and half day, forty hour work week in which an employee may work four nine-hour days and a half day on Friday. Some utilize a two-twenty four schedule on the weekends with a part-time employee working twelve hours on Saturday and Sunday. This provides more effective use of capital equipment and serves the needs of those interested in part-time work; for example, college students.

Most of EIA's member companies are major government contractors. Those that are not, contract with the federal government on occasion. A single member company may have, at any given time, as many as 5,000 - 15,000 employees involved in government contract work. Because of the overtime provision, these companies do no have the necessary freedom to adjust to changing work patterns in the United States.

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Management is most effective when it can respond to its employees needs; consequently, it creates a more productive work force. Evidence supports two conclusions. First, that flexible work schedules are increasingly necessary and useful; and second, that the private marketplace is very responsive to work force behavior and manpower needs. Our changing work environment and employee expectations mandate this type of flexiblility without arbitrary penalty.

Several studies have been conducted which document the benefits of flexible work hours and the four day, ten hour per day work week. These work schedules are generally characterized by very high employee acceptance and satisfaction; improved morale; increased productivity; reduced turnover, absenteeism and tardiness; and improved quality of working life. Also, studies have shown very significant savings in operating costs such as start-up, maintenance, and energy. Energy conservation includes both facility and commuting expenditure of energy.

Finally, in order to meet the challenge of the increasingly competitive world marketplace, our companies must be permitted to maximize efficiency and productivity through such practices on flexible work schedules.

Recognizing that the proposed legislation does not mandate that contractors change their practices, but simply allows them to exercise very important options, EIA strongly supports S.1105 and urges its favorable consideration and passage in the Senate.

Senator **Nickles**. To all of our panelists, I want to thank you for your cooperation and also the fact that everyone cooperated to the extent of summarizing their comments. I will keep the record open for a couple of weeks in case other committee members might wish to submit questions to you and if they do, I would appreciate your prompt response.

I think we are making some progress on this issue. As I mentioned at the outset, we have been working toward it for 5 years now. We were successful in a Senate resolution that stated our support for the concept. We were successful in getting basically this change made in the DOD authorization that passed in the Senate a week or so ago. I am hopeful that we will be successful in getting this passed as an independent piece of legislation which would affect all Government contracts. We will work toward that endeavor and we appreciate your cooperation in filling the record.

It should be noted for the record that we did invite the AFL-CIO to testify and they declined.

Again, to all of the panelists, we thank you very much for your cooperation. Thank you.

[Whereupon, at 10:55 a.m., the subcommittee adjourned, subject to the call of the Chair.]

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